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IN THE

Supreme Court of the United States

No. 873

PETER S. SARELAS,

Petitioner,

vs.

JOHN C. GEKAS; and CONSTANTINE D. CHAPRALIS, alias Major C. D. Chapralis; and ANDREW CARDARAS; and GEORGE W. ALEXANDER; and THEMIS ANAGNOST; and ATHANASIOS A. PANTELIS, also known as A. A. Pantelis; and WILLIAM J. RUSSIS; and DEMOSTHENES I. GEORGOULIS; and A. THOMAS RANGAVES; and DEMETRIOS PARRY; and SPYROS D. SOTER, also known as S. D. Soter; and EVANGELOS NITTIS, also known as E. Nittis; and CONSTANTINE MAZARAKIS; and GEORGE S. PORIKOS; and EVANGELOS C. DESPOTES; and THEMIS TSAOUSSIS; and ADAMANTIOS ANDROUTSOPOULOS; and GEORGE A. XYDIS; and GEORGE LOURIS;

Respondents.

PETER S. SARELAS,

Petitioner,

vs.

PHILLIP S. MAKIN, alias Phillip S. Marinacos; and BASIL CHRISTOFORACOS, alias Hristos Cokinis; and JOHN C. GEKAS,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

The Petitioner, Peter S. Sarelas, prays that writs of certiorari be issued to review the final judgment of the Supreme Court of the State of Illinois, dismissing the appeal in each of the above-entitled cases, sought to be reviewed on certiorari.

A single petition is filed under Rule 23.5 of the Rules of the Supreme Court of the United States, covering both cases, because they involve identical or closely related questions. The cases will be referred to as No. 1 and No. 2, respectively.

Opinions Below.

No opinion was rendered by the Supreme Court of the State of Illinois in either case.

Documents and Papers Transmitted with Petition.

1. Certified copy of Abstract of Record for each case, with nine additional copies.

2. Certified copy of Brief for each case. No Brief was filed by defendants-appellees therein.

3. Certified copies: Of Motion filed in Case No. 1, by defendants-appellees therein to dismiss appeal; Objections and Counter-Suggestions of plaintiff-appellant; Motion filed for reconsideration of Judgment dismissing appeal; Objections of defendants-appellees.

4. Certified copies: Of Motion filed in Case No. 2, by defendants-appellees therein to dismiss appeal; Objections and Counter-Suggestions of plaintiff-appellant.

5. Certified copies: Of the judgment of the Supreme Court of Illinois, in Case No. 1, entered on January 16, 1962, dismissing the appeal (Appendix A *infra* pp. 1-3); and of the Order entered on January 23, 1962, denying the Motion for reconsideration of judgment dismissing the appeal. (Appendix B, *infra* pp. 4-5).

6. Certified copy of the judgment of the Supreme Court of Illinois, in Case No. 2, entered on January 22, 1962 (Appendix C, *infra* pp. 6-7).

Jurisdiction.

The judgment of the Supreme Court of Illinois in Case No. 1, dismissing the Appeal, was entered on January 16, 1962 (Appendix A, *infra* pp. 1-3). And the timely motion for reconsideration of judgment dismissing the appeal, was denied on January 23, 1962 (Appendix B, *infra* pp. 4-5).

The judgment of the Supreme Court of Illinois in Case No. 2, dismissing the Appeal, was entered on January 22, 1962 (Appendix C, *infra* pp. 6-7). This Case was appealed from the Appellate Court of Illinois, First District. It was there heard on transfer from the Supreme Court of Illinois (Abst. 67; App. Court Rec. 2-4, 6-7, 9-10). The Opinion of the Appellate Court, not published in full, appears as Appendix "A" (pp. 45-50) in the certified copy of the Brief. It is reported in abstract, at 32 Ill. App. 2d 320, 177 N.E. 2d 867. Said Brief is transmitted with this Petition.

The jurisdiction of this Court is invoked under 28 U.S. C.A. Sec. 1257(3).

Article VI, Sec. 11, of the Constitution of the State of Illinois, provides:

> "After the year of our Lord one thousand eight hundred and seventy-four appellate courts, of uniform organization and jurisdiction, may be created in districts formed for that purpose, to which such appeals and writs of error as the General Assembly may provide, may be prosecuted from circuit and other courts, and from which appeals and writs of error shall lie to the Supreme Court, in all criminal cases, and cases in which a franchise, or freehold, or the validity of a statute is involved, and in such other cases as may be provided by law."

And Article VI, Sec. 8, of the Constitution of the State of Illinois provides:

"Appeals and writs of error may be taken to the Supreme Court held in the grand division in which the case is decided, or by consent of the parties, to any other grand division."

The Legislature provided for such appeals by the enactment of Sections 74, 75, 77 of Chap. 110, of the Illinois Revised Statutes (1959-1961). Section 74 thereof provides:

"(1) Every order, determination, decision, judgment or decree reviewable by the Supreme or Appellate Court of this State is subject to review by notice of appeal. The review shall be designated an appeal and constitutes a continuation of the proceeding in the trial court. The appeal presents to the reviewing court all issues which heretofore have been presented by appeal and writ of error."

* * *

"(3) Every order, determination, decision, judgment or decree of the Appellate Court heretofore reviewable by the Supreme Court by writ of error shall hereafter be reviewable only by appeal. The appeal shall be perfected by notice of appeal filed with the Clerk of the Appellate Court within 40 days after the order, determination, decision, judgment or decree of the Appellate Court becomes final, either through denial of a petition for a hearing or the expiration of the time within which a petition for rehearing might have been filed."

* * *

"No step in the perfection of the appeal other than the filing of the notice of appeal is jurisdictional. The appeal may be taken by any person heretofore entitled to sue out a writ of error. It presents to the Supreme Court all issues heretofore presented by writ of error, and constitutes a continuation of the proceeding in the Appellate Court. All steps subsequent to the filing of the notice of appeal shall be provided by rule."

And Section 75 thereof provides:

"(1) Appeals shall be taken directly to the Supreme Court (a) in all cases in which a franchise or freehold or the validity of a statute or a construction of the constitution is involved. * * *".

And Section 77 thereof provides:

"(1) Appeals shall lie to the Appellate or Supreme Court, in cases in which any form of review may be allowed by law, to review the final judgments, orders or decree of the circuit court, the superior court of Cook County, the county courts, the city courts and other courts whose judgments, orders and decrees are reviewable therein, under such limitations and conditions as may be imposed by law and subject to rules."

From the final judgment of the Supreme Court of Illinois, after the taking of such an appeal in the above entitled cases, petitioner has no further appellate remedy under the laws of the State of Illinois.

Questions Presented.

1. Whether the judgment order of the Illinois Supreme Court dismissing petitioner's appeal on respondents' motion asserting a patently false allegation as to finality of summary judgment violates the Due Process Clause of the Fourteenth Amendment.

(i) Where the summary judgment order of the state trial court, appealed from to the Illinois Supreme Court states "That the motion of the defendants for summary judgment against the plaintiff on the alleged cause of action for assault or assault and battery is sustained and it is ordered that so far as the plaintiff's Complaint for damages arising out of assault and battery alleged to have been committed by the defendants upon and against him, it be and is hereby dismissed and it is ordered that the plaintiff in respect to that part of his Complaint, *go hence without*

a day and take nothing by this suit." (Case No. 1, Abst. 123; Rec. 276). (Emphasis added).

(ii) Where the judgment order appealed from to the Illinois Supreme Court shows on its face that the trial court, without hearing evidence, makes findings of fact, as to respondents' intent to commit an assault or assault and battery. (Abst. 123; Rec. 276).

2. Whether the judgment order of the Illinois Supreme Court dismissing petitioner's appeal on respondents' motion alleging conclusions and hearsay matters dehors the authenticated Record on Appeal violates the Due Process and Equal Protection of the Laws Clause of the Fourteenth Amendment.

(i) Where the record shows on its face that the deposition officer never made a return of the discovery deposition as directed by the order of the trial court (Case No. 1, Abst. 11, Rec. 57), and as required by Rule 101.19-6(4)(5)(a), of the Illinois Supreme Court Rules, Ch. 110, Illinois Revised Statutes (1957-1961).

(ii) Where the record shows on its face that the respondents filed their own "Excerpts" and transcript of deposition as "exhibits", (Abst. 83, 117-121; Rec. 222, 258-261), in violation of the order of the trial court (Abst. 11; Rec. 57) and in violation of the Illinois Supreme Court Rule 101.19-6(4)(5)(a), Ch. 110, Illinois Revised Statutes, (1957-1961) which provides:

> "(4) Submission to Deponent; Changes; Signing.
>
> "When the testimony is transcribed the deposition shall be submitted to the deponent for examination and shall be read to or by him, unless waived by the deponent and by the parties. Any changes in form or substance which the deponent desires to make shall be entered upon the deposition by the officer with a state-

ment of the reasons given by the deponent for making them. The deposition shall then be signed by the deponent, unless the parties waive the signing or the deponent is ill or cannot be found or refuses to sign. If the deposition is not signed by the deponent, the officer shall state in his certificate the fact of the waiver or of the illness or absence of the deponent or the fact of the refusal to sign together with the reason, if any, given therefor. The deposition may then be used as fully as though signed, unless on a motion to suppress the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

"(5) Certification and Filing by Officer; Fees and Charges; Copies; Notice of Filing.

"(a) The officer shall certify on the deposition that the deponent was duly sworn by him and that the deposition is a true record of the testimony given by the deponent. In the case of an evidence deposition, and at the request of any party in the case of a discovery deposition, the officer shall then securely seal the deposition or depositions, together with all exhibits, in an envelope indorsed with the title of the action and marked 'Depositions of (here insert names of deponents)' *and promptly file it* OR SEND *it by registered mail to the clerk of the court for filing.* A deposition so certified and filed requires no further proof of authenticity.

"(b) The party causing a deposition to be filed shall promptly serve notice thereof on the other parties." (Emphasis added).

(iii) Where the record on appeal shows on its face that the grounds specified in petitioner's verified Motion to Suppress the respondents' own "Excerpts" and transcript of deposition, stand admitted by their failure to file an Answer. (Abst. 117-121; Rec. 258-261).

(iv) Where the Record on Appeal shows on its face that respondents did not file a praecipe for any additional parts of the record to be incorporated in the record on appeal (Abst. 126; Rec. 290), as required by Rule 101.36(1)(a)(3) of the Illinois Supreme Court, Ch. 110, Illinois Revised Statutes (1959-1961), which provides:

> (1)(a) "Praecipe practice. In appeals taken directly to an Appellate Court or this court, the appellant shall, within 10 days after the notice of appeal has been filed, prepare and file a praecipe with the clerk of the trial court, with proof of service of a copy on the appellee or his attorney, in which appellant shall designate what parts of the trial court record are to be incorporated in the record on appeal. *The appellee*, or coparty prosecuting a separate appeal, *shall within 5 days after being so served, file a praecipe for any additional parts of the record that he may desire to have incorporated in the record on appeal*, with proof of service of a copy upon each party or attorney or firm of attorneys who signed the notice of appeal." (Emphasis added).
>
> (3) "If the record on appeal is insufficient to present fully and fairly the questions involved, the requisite portions may be supplied at the cost of the appellant.
>
> "Any party who has specified for incorporation in the record on appeal unnecessary and immaterial portions of the trial court record may be ordered by the reviewing court, irrespective of how the appeal is decided, to bear the entire expense of incorporating those portions, as costs in the case."

And where Rule 101.38 provides:

> "The abstract need only be sufficient to present fully every error relied upon. Matters in the record on appeal not necessary for a full understanding of the questions presented for decision shall not be abstracted.

* * * The abstract will be taken to be accurate and sufficient unless the opposing party files an additional abstract."

3. Whether the State of Illinois Supreme Court can ignore the command of the Due Process and Equal Protection of the Laws Clause of the Fourteenth Amendment and deny at will, the safeguards of our constitutional system, required to be extended to all.

(i) Where under the Illinois constitutional and statutory provisions quoted on pages 3-5, 6-7, 8-9 of this Petition and adopted here by reference, no authority existed for such judgment order dismissing the appeal.

(ii) Where such judgment order of dismissal violated also the basic constitutional guarantees of the Illinois Constitution (Sections 1, 2, 5, 19, Article II; and Sections 8, 11, Article VI); the legislative enactments pertaining to appeals (Sections 74(1), 75(1)(a), 77(1), Chapter 110, Illinois Revised Statutes (1959-1961); and the Rules promulgated by the Illinois Supreme Court relating to appeals (Rules 101.36(1)(a)(3); 101.38, Chapter 110, Illinois Revised Statutes (1959-1961). Sections 1, 2 and 5, Article II, of the Illinois Constitution provide:

Sec. 1. "All men are by nature free and independent, and have certain inherent and inalienable rights—among these are life, liberty and the pursuit of happiness. To secure these rights and the protection of property, governments are instituted among men, deriving their just powers from the consent of the governed."

Sec. 2. "No person shall be deprived of life, liberty or property without due process of law."

Sec. 5. "The right of trial by jury, *as heretofore enjoyed, shall remain inviolate;* * * *". (Emphasis added.)

Section 19 of Article II, and Sections 8 and 11, Article VI, of the Illinois Constitution are quoted on pages 10-11, 3-4, of this Petition and adopted here by reference.

Sections 74(1), 75(1)(a), 77(1) and Illinois Supreme Court Rules 101.36(1)(a)(3), 101.38, all in Chapter 110, Illinois Revised Statutes (1959-1961), are also quoted on pages 4-5, 8-9, of the Petition and adopted by reference.

Case No. 2.

1. Whether the judgment order of the Illinois Supreme Court dismissing petitioner's appeal from the Appellate Court, on respondents' motion alleging conclusions only, violates the Due Process Clause of the Fourteenth Amendment.

(i) Where an appeal from the Appellate Court's Decision is a Constitutional as well as Common Law right. (Article VI, Sections 8, 11, of the Constitution of the State of Illinois; Section 74(3), Ch. 110, Illinois Revised Statutes (1959-1961), quoted in this Petition on pages 3-4 and adopted here by reference).

2. Whether the judgment order of the Illinois Supreme Court dismissing petitioner's appeal on such motion of the respondents violates the Due Process and Equal Protection of the Laws Clause of the Fourteenth Amendment.

(i) Where the Appellate Court's Decision affirmed the dismissal of petitioner's cause of action by the State trial court, which did not hear evidence and denied petitioner's right to trial by jury. (Abst. 61, 22; Rec. 19, 149).

(ii) Where the Decision of the Appellate Court negates and violates Section 19, Article II, of the Illinois Constitution which provides:

> "Every person ought to find a certain remedy in the laws for all injuries and wrongs which he may

receive in his person, property or reputation; he ought to obtain, by law, right and justice freely, and without being obliged to purchase it, completely and without denial, promptly, and without delay."

(iii) Where the Appellate Court's Decision affirmed the state trial court's dismissal of petitioner's cause of action on respondents' motion which did not specify any grounds whatever. (Abst. 23, 24; Rec. 25, 26).

(iv) Where said Decision of the Appellate Court holds that the publication and filing of fantastic, inherently false and intentionally made malicious and libelous answers to interrogatories (Abst. 4, 5, 6, 45, 46, 47; Rec. 5, 6, 118, 119, 120), are absolutely privileged, contrary to the well established rule of law that interrogatories and answers thereto are not pleadings and therefore no privilege can be asserted.

(v) Where the said Decision negates and violates the well established rule of law that the question of respondents' conduct, of motive, of good faith and honest purpose, of bad faith and malicious purpose and whether they were protected under the circumstances, is a question of fact for the jury and not a question of law for the court.

(vi) Where the Appellate Court's Decision negates and violates the Rule of Law that the alleged privileged communication cannot be used as a weapon of offense and as a shield to enable malefactors to carry out contemplated malicious wrongs and crimes against society.

(vii) Where the Decision of the Appellate Court negates and violates the Rule of Law that the immunity of a privileged communication is the exception, and he who relies upon an exception must prove all the facts necessary to bring himself within it.

Constitutional and Statutory Provisions Involved.

A). Amendment XIV to the Constitution of the United States, Section 1:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

B). Article II, Sections 1, 2, 5, 19 (Bill of Rights); Article VI, Section 8 (Supreme Court); Article VI, Section 11 (Appellate Courts), of the Constitution of the State of Illinois, Ill. Rev. Stat. 1961, pp. 9-10, 16, are quoted on pages 3, 4, 9, 10-11 of this Petition and adopted here by reference.

C). Illinois Appellate Practice, Chap. 110, Sections 74(1)(3); 75(1)(a), 77(1), Ill. Rev. Stat. 1961, pp. 1241, 1242; Illinois Supreme Court Rules, Chap. 110, 101.36(1)(a)(3); 101.38, Ill. Rev. Stat. 1961, pp. 1260, 1261, 1262, are quoted on pages 4-5, 8-9 of the Petition and incorporated here by reference.

D). Illinois Supreme Court Rules, Chap. 110, 101.19-6 (4)(5)(a), Ill. Rev. Stat. 1961, pp. 1251-1252, are quoted on pages 6-7 of the Petition and adopted here by reference.

E). Illinois Supreme Court Rules, Chap. 110, 101.15 (1)(2), Ill. Rev. Stat. 1961, p. 1249, provides:

> "(1) Affidavits in support of and in opposition to a motion for summary judgment or decree, and affidavits under section 48 of the Civil Practice Act,

shall be made on the personal knowledge of the affiants; *shall set forth with particularity the facts* upon which the claim, counterclaim or defense is based; shall have attached thereto sworn or certified copies of all papers upon which the affiant relies; *shall not consist of conclusions but of facts admissible in evidence; and shall affirmatively show that the affiant, if sworn as a witness, can testify competently thereto.* If all of the facts to be shown are not within the personal knowledge of one person, two or more affidavits shall be used. (Emphasis added.)

"(2) If the affidavit of either party contains a statement that any of the material facts which ought to appear in the affidavit are known only to persons whose affidavits affiant is unable to procure, by reason of hostility or otherwise, naming the persons and showing why their affidavits cannot be procured, and what affiant believes they would testify to if sworn, with the reasons for his belief, the court may make any order that may be just, either granting or refusing the motion, or granting a continuance to permit affidavits to be obtained, or for submitting interrogatories to or taking the depositions of any of the persons so named, or for producing papers or documents in the possession of those persons or furnishing sworn copies thereof. The interrogatories and sworn answers thereto, depositions so taken, and sworn copies of papers and documents so furnished, shall be considered with the affidavits in passing upon the motion."

F). Illinois Civil Practice Act, Chap. 110, Section 48(1)(a) to 48(1)(i) inclusive, specifying all the grounds for involuntary dismissal, and 48(3), 48(6), Ill. Rev. Stat. 1961, p. 1235, provide:

"48. Defendant may, within the time for pleading, file a motion for dismissal of the action or for other appropriate relief upon any of the following groun

If the grounds do not appear on the face of the pleading attacked the motion shall be supported by affidavit:

"(a) That the court does not have jurisdiction of the subject matter of the action, provided the defect cannot be removed by a transfer to a court having jurisdiction.

"(b) That the plaintiff does not have legal capacity to sue or that the defendant does not have legal capacity to be sued.

"(c) That there is another action pending between the same parties for the same cause.

"(d) That the cause of action is barred by a prior judgment.

"(e) That the action was not commenced within the time limited by law.

"(f) That the claim or demand set forth in the plaintiff's pleading has been released, satisfied of record, or discharged in bankruptcy.

"(g) That the claim or demand asserted is unenforceable under the provisions of the Statute of Frauds.

"(h) That the claim or demand asserted against defendant is unenforceable because of his infancy or other disability.

"(i) That the claim or demand asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim or demand."

"(3) If, upon the hearing of the motion, the opposite party presents affidavits or other proof denying the facts alleged or establishing facts obviating the grounds of defect, the court may hear and determine the same and may grant or deny the motion. If a material and genuine disputed question of fact is raised the court may decide the motion upon the af-

fidavits and evidence offered by the parties, or may deny the motion without prejudice to the right to raise the subject matter of the motion by answer *and shall so deny it if the action is one at law and a jury demand has been filed by the opposite party in apt time.*" (Emphasis added.)

"(6) The form and contents of said procedure relating to affidavits under this section shall be as provided by rule."

G). Illinois Civil Practice Act, Chap. 110, Sections 40(1)(2)(3); 42(2)(3); 45(1)(2); Ill. Rev. Stat. 1961, pp. 1233, 1234, provide:

"40.(1) General issues shall not be employed. Every answer and subsequent pleading shall contain an explicit admission or denial of each allegation of the pleading to which it relates.

"40.(2) Every allegation except allegations of damages, not explicitly denied is admitted, unless the party states in his pleading that he has no knowledge thereof sufficient to form a belief, and attaches an affidavit of the truth of the statement of want of knowledge, or unless the party has had no opportunity to deny.

"40.(3) Denials must not be evasive, but must fairly answer the substance of the allegation denied."

"42.(2) No pleading is bad in substance which contains such information as reasonably informs the opposite party of the nature of the claim or defense which he is called upon to meet.

"42.(3) All defects in pleadings, either in form or substance not objected to in the trial court are waived."

"45.(1) All objections to pleadings shall be raised by motion. The motion *shall point out specifically* the defects complained of, and shall ask for appropriate relief, such as: that a pleading or portion thereof be

stricken because substantially insufficient in law, or that the action be dismissed, or that a pleading be made more definite and certain in a specified particular, or that designated immaterial matter be stricken out, or that necessary parties be added, or that designated misjoined parties be dismissed, and so forth.

"(2) If a pleading or a division thereof is objected to by motion to dismiss or for judgment or to strike out the pleading, because it is substantially insufficient in law, *the motion must specify wherein the pleading or division thereof is insufficient.*" (Emphasis supplied.)

STATEMENT OF THE CASE.

I. Procedural History of the Case (No. 1).

The petitioner filed his Complaint with Jury Demand on December 8, 1958 (Abst. 1-5; Rec. 2-6, 8), charging in one Count (3½ pages) that the respondents, unlawfully, wickedly and maliciously conspired, confederated and agreed together with intent to commit a riot and assault, injure, harm, intimidate, humiliate, defame and embarrass the petitioner and to prevent and stop him from presiding in a meeting of the Hellenic Professional Society of Illinois, a legal entity incorporated by the State of Illinois, in the Morrison Hotel, Chicago, Illinois, on October 31, 1958. Respondents' overt acts in pursuance of the conspiracy are alleged and specified in the complaint. (Abst. 1-5; Rec. 2-6).

On January 22, 1959, the motion of two of the respondents to dismiss the Complaint was denied. (Abst. 10; Rec. 49). On the same day an order was entered for the taking of petitioner's discovery deposition and excused the respondents from filing answers or objections to petitioner's *written interrogatories until 15 days after the completion* of the oral discovery deposition of petitioner by "each and every one" of the respondents. (Abst. 10-11; Rec. 51).

On April 1st, 1959, an order was entered directing Master Thomas Sheehan "to take testimony therein of the plaintiff under a discovery deposition on behalf of the defendants and return the same to the Court within a reasonable period hereafter." (Abst. 11; Rec. 57). By successive motions, the respondents were granted extensions to answer or plead to the Complaint, until 15 days after the "return" of petitioner's discovery deposition. (Abst. 11; Rec. 60),

Respondents took discovery depositions in 11 different sessions totaling over 21 hours from January 29, 1959 to April 7, 1960. (Abst. 19; Rec. 68).

On April 20, 1960, petitioner filed his verified Motion to terminate the depositions or for alternative relief and for rule on respondents to answer the Complaint and written interrogatories. The motion specified the reasons with particularity. (Abst. 12-22; Rec. 68-75). Certain respondents filed answers to the Motion while others filed motions to strike. (Abst. 22-36; Rec. 77-108). Replies and Objections were filed by petitioner (Abst. 36-58; Rec. 109-138). "Replication" was filed by certain respondents. (Abst. 58, 72; Rec. 139-140, 172-173).

By the Order of the state trial court entered April 20, 1960, the hearing was set for May 26, 1960. (Abst. 22; Rec. 75-B). It was reset by order of court for June 16, 1960. It was again reset for June 21 1960 (Abst. 85; Rec. 224). On June 22, 1960, the trial court entered an order staying all proceedings until the Court rules on respondents' motion for summary judgment. (Abst. 122; Rec. 269).

No hearing was ever granted on petitioner's said Motion.

No answer was filed to the complaint by respondents.

No answer was filed by any of the respondents to petitioner's interrogatories.

No "Return" was ever filed by the deposition officer Master Sheehan. (Abst. 117-121; Rec. 258-261).

On June 6 and 7, 1960, the respondents filed their own "Excerpts" and transcript of discovery deposition as "exhibits" (Abst. 83; Rec. 222). These are described with particularity in petitioner's verified Motion to Suppress such "exhibits". No answer was filed by respondents to said motion. (Abst. 117-121; Rec. 258-261).

On May 16, 1960, without leave of court, multitudinous papers and documents were filed by a stranger to petitioner's suit, one Timothy Bishop (Abst. 59-71; Rec. 143-167). Such papers include a letter from the Greek Consul of Chicago directed "*To the Judges of the Superior Court of Cook County, Illinois*" (Abst. 71; Rec. 166). Another document included consists of seven typewritten pages, and contains a defamatory and libelous statement against petitioner by John C. Gekas, one of the respondents (Abst. 65-68; Rec. 155-159). At the top of the first page appears in handwriting "March 20, 1959" (Abst. 65; Rec. 155). On June 7, 1960, a signed copy of such document was filed as an "exhibit" by order of the state court Judge John J. Lupe. (Abst. 83, 65-76; Rec. 222, 155-161). On the same day additional multitudinous documents were filed as "exhibits", by order of said state court Judge. (Abst. 83-85; Rec. 222-224). Motions and affidavits were filed by respondents on various dates between May 16, 1960 to June 7, 1960, including an affidavit by the wife of respondent, Themis Anagnost, alleging that their acts alleged in petitioner's Complaint (Abst. 3-5; Rec. 4-5), were "privileged". (Abst. 74-75, 76-77, 78, 79-80, 81, 82; Rec. 190, 199-200, 201, 202, 204, 205, 206-208, 210-211, 218, 220).

On June 6, 1960, in an affidavit filed in support of respondents' motion for summary judgment, it is alleged that an Exhibit A is certified by Thomas J. Sheehan, Master in Chancery of said state trial court and "contain the statements and admissions" of petitioner, "showing that any acts and statements of the defendants (respondents) or any of them, if any were made, were and are privileged and that the plaintiff (petitioner) has no cause of action." (Abst. 81-82; Rec. 218).

On June 17, 1960, petitioner's Motion and Counter Affidavit were filed asking the state court to strike or deny

respondents' motions and their multitudinous documents and papers. The grounds, supported by exhibits attached thereto, are stated with particularity. (Abst. 85-105, 106-116; Rec. 225-242, 243-256).

On June 22, 1961, the state trial court entered an order denying respondents' motion to strike the Complaint alleging assault or assault and battery. In the same order said court sustained respondents' motion for summary judgment, and ordered that the plaintiff "*go hence without a day and take nothing by this suit.*" (Abst. 123; Rec. 276). Without hearing evidence and without trial on the merits, the court in the same order makes findings of fact, usurping the province of the jury, that none of the respondents intended nor did they commit an assault upon petitioner nor did they intend to or commit an assault and battery upon petitioner. (Abst. 123; Rec. 276).

On August 2nd, 1961, petitioner filed his Notice of Appeal to the Illinois Supreme Court appealing from the trial court's summary judgment order (Abst. 123-125; Rec. 278-280). It includes other erroneous orders of the state trial court, authorized to be presented on appeal by Section 74(1), Chap. 110, Ill. Rev. Stat. p. 1241, which provides: "The appeal presents to the reviewing court all issues which heretofore have been presented by appeal and writ of error." And authorized by Section 74(2), same Chapter, p. 1241, which provides: "All matters in the trial court record actually before the court on appeal may be considered by the court for all purposes, but if not properly authenticated the court may order further authentication."

In the Brief filed by petitioner in the Illinois Supreme Court, the jurisdictional grounds are stated with particularity and the constitutional questions are raised and as-

serted. (Certified copy of Brief, pp. 8-9, 23-28, 5-7, pars. 1, 2, 3, 8, 10). They were also raised and asserted in petitioner's Objections and Counter-Suggestions to respondents' motion to dismiss the appeal (p. 5, par. 8; p. 6, 1st par.; p. 7, par. 18; p. 8, par. 22): under Points and Authorities (p. 2, Point III; pp. 3-4, Point III-A). They were raised and asserted in petitioner's motion for reconsideration of the Judgment Order of dismissal by the Illinois Supreme Court (pp. 3, 4, 5th and 6th pars.). (Certified copies are transmitted with Petition).

Constitutional questions were raised and asserted also in petitioner's pleadings in the state trial court. (Abst. 7, 15, par. (c), 16, par. 9(a), 21, par. 18, 37, 1st par., 46, par. 10, 48, par. 2, 55, 1st par., 56, par. 1(c), 57, par. 4, 58, par. 3, 87, pars. 10, 12, 90, par. 4, 97, par. 3; Rec. 20, 70, 71, 74, 111, 119, 122, 131, 134, 137, 227-228, 231, 235).

Constitutional questions are inherent in the summary judgment order of the state trial court (Abst. 122-123; Rec. 275-276), and apparent on the face of the Record on Appeal, and are inherent in the judgment order of the Illinois Supreme Court dismissing petitioner's appeal, *viz.*: disregard and denial of the basic constitutional guarantees of Due Process of Law and Equal Protection of the Laws.

Under Illinois Practice the Appellate Court has no power or jurisdiction to pass on constitutional questions.

II. The Facts Material to the Questions Presented.

The petitioner, during the year of 1958, was president of the Hellenic Professional Society of Illinois, a non-profit corporation, incorporated by the State of Illinois. The purpose and object authorized in the Society's Charter and in its By-Laws were to maintain the honor and dignity of the several professions of the constituent members; to encourage and promote education among people of Hellenic

descent throughout the United States; and, to cooperate with other organizations of professional men in encouraging and promoting scientific research and development. The Society required that an eligible member be a graduate from an accredited college or university, American or foreign, recognized and accredited by the National Association of Colleges. (Abst. 2; Rec. 4).

The petitioner during the entire year of 1958, in conformity with the Society's stated purpose in its Charter and By-Laws, instituted 14 educational lectures by outstanding men of achievement, and the sponsorship of the American Farm School, an American Institution in Greece, on its 54th year of progress. (Abst. 39-43; Rec. 113-114).

On October 31, 1958, the Society held its annual meeting in the Morrison Hotel situated in the business center of Chicago, Illinois, to consider among other matters proposed amendments to its By-Laws, including safeguards against infiltration or admission to said Society of subversive elements or persons who are members of a subversive organization defined and listed as such by the Attorney General of the United States; and of persons convicted by a court of record for a felony or for a misdemeanor involving moral turpitude, in order to comply with and support the national policy of the United States and of the State of Illinois. (Abst. 2-3; Rec. 4).

By their motions for involuntary dismissal or for summary judgment, the respondents admit the allegations in the Complaint directly alleged, including:

1. That on to wit: October 31, 1958, they contrived with intent to injure, harm, intimidate, assault, humiliate, defame and embarrass the petitioner and to prevent and stop him from presiding at the annual meeting of the Hellenic Professional Society of Illinois, at the Morrison Hotel,

Chicago, Illinois; and did unlawfully, wickedly and maliciously combine, conspire, confederate and agree together and with other persons whose identities are unknown to the plaintiff, with the unlawful, wicked and malicious intent to incite and create a riot and to act in a violent, abusive and tumultuous manner and by these unlawful means and thereby in an unlawful manner to accomplish their purpose above described (Abst. 2-3; Rec. 4-5).

2. That in pursuance of their unlawful conspiracy and in furtherance of the unlawful object and purpose thereof, the respondents did cause and procured, directed, aided, abetted, commanded and assented to be committed the following overt acts during the annual meeting of said Society on October 31, 1958, against the petitioner:

(a) At about 8:30 o'clock P.M., on October 31, 1958, the respondents entered the said premises riotously, violently and tumultuously, and against the will of the petitioner continued and persisted in their riotous, violent and tumultuous manner for a long period, to wit: two hours, and did then and there used or caused to be used vile, abusive, insulting and opprobrious language and words against the petitioner (Abst. 3-4; Rec. 5).

(b) That the respondents then and there, unlawfully, wickedly and maliciously made or caused to be made threats of physical violence against the petitioner; and then and there made or caused attempts to be made against the petitioner with force and violence to throw him out of said premises; and then and there shouted or caused to be shouted vile, opprobrious and abusive language and words against the petitioner; and then and there unlawfully, wickedly and maliciously made or caused to be made defamatory and slanderous remarks against the petitioner

shouting to the petitioner, "Now, you Hitler and Mussolini, get out or we'll throw ou out." (Abst. 4; Rec. 5).

(c) That the respondents then and there unlawfully, wickedly and maliciously threw or caused to be thrown objects against the petitioner while he was presiding at said meeting of the Hellenic Professional Society of Illlinois; and then and there made or caused to be made violent attempts against the petitioner to prevent and stop him from presiding; and then and there made and caused to be made violent threats against the petitioner to strike him with clenched fists and to eject him forcibly from said premises (Abst. 4; Rec. 5).

That by means and in consequence of said wrongful and illegal combination and of the wrongful acts in furtherance of the wrongful object thereof; and by reason of the violent threats and threatening acts hereinabove described, caused and procured, directed, aided, abetted, commanded and consented to be committed by the respondents, the petitioner was put in fear of his life, and thereupon and by reason of the numerous persons being present and hearing said threats, and the vile, abusive and opprobrious language and defamatory words, and seeing the threatening acts and conduct of said respondents towards the petitioner, the petitioner suffered humiliation and brought into public scandal and disgrace, and was greatly wounded in his feelings and he has suffered mental anguish and pain to the great and irreparable damage of the petitioner, and against the dignity and peace of the people of the State of Illinois (Abst. 5; Rec. 5).

To avoid repetition, the foregoing statement under the heading of "Procedural History of the Case", is incorporated here by reference.

CASE NO. 2.

STATEMENT OF THE CASE.

I. Procedural History of the Case.

The petitioner appealed to the Illinois Supreme Court from the judgment order of the Appellate Court of Illinois, First District, entered on October 16, 1961, affirming the judgment order of the state trial court. (Abst. App. Ct. 67; Rec. App. Ct. 6-7). Petition for Rehearing was denied on November 20, 1961 (Abst. App. Ct. 67; Rec. App. Ct. 8-9). It was there heard on transfer from the Illinois Supreme Court (Abst. App. Ct. 67; Rec. App. Ct. 2-4). Petitioner had appealed direct to the Illinois Supreme Court from the judgment order of the state trial court entered on May 6, 1960, dismissing petitioner's suit and ordering that the petitioner "go hence without day and take nothing by his suit" (Abst. 61-62; Rec. 149, 150-151).

Petitioner's Complaint with Exhibits and Jury Demand was filed in the Superior Court of Cook County, Illinois, on March 30, 1960. (Abst. 1-22; Rec. 2-17, 18-49).

It alleges that the respondents conspired, confederated and agreed with each other to defame, libel, insult, intimidate and injure the petitioner, by making, publishing and filing or causing to be made, published and filed, false, base, scurrilous and dastardly attacks upon the character of the petitioner in the written answers to certain interrogatories in Case No. 59 C 1996, in the Circuit Court of Cook County, Illinois, specified in the Complaint (Abst. 1-22; Rec. 3-17); that said answers were known by the respondents and each of them, to be totally and completely false, malicious, fraudulent and corrupt fabrications when made, published and filed; that they were calculated to de-

fame, libel, insult, intimidate and injure the petitioner; and that they were known, when made, published and filed to be irrelevant, immaterial and impertinent to the issues in said Case. (Abst. 4-8; Rec. 5-8). *No answer or defense to the Complaint was filed by the respondents; no grounds whatever were alleged in their motion to dismiss; no trial on the merits and no evidence was heard.* (Abst. 23, 24, 61; Rec. 25, 36, 149).

Petitioner filed his motions to strike or deny respondents' motions to dismiss and for Rule on respondents to answer the Complaint on the merits. (Abst. 51-52, 52-54; 54-60, Exh. A; Rec. 134-135, 136-139, 140-145).

On August 10, 1960, an order was entered by Judge Samuel B. Epstein, of Superior Court, Cook County, Illinois, ordering "that the Clerk of the Superior Court of Cook County certify the record on appeal as per Praecipe for Record, the order of Judge Locke impounding the Superior Court files in the above entitled cause notwithstanding". And further ordered "that the Clerk of the Superior Court is not obliged to certify any Circuit Court exhibits in any Circuit Court file as per request in the additional Praecipe for Record other than such exhibits as may be attached to any motion in the Superior Court files in the above entitled cause." (Abst. 64; Rec. 168).

The Certificate of said Superior Court Clerk certifies that the Items listed in respondents' Additional Praecipes are not of Record in the Court. (Abst. 64-65; Rec. 168).

The judgment order of the Illinois Supreme Court entered on January 22, 1962, dismissed petitioner's appeal from the Appellate Court (Appendix C, *infra* pp. 6-7), on the motion of respondents, alleging conclusions only. Petitioner had filed his Objections and Counter-Suggestions. (Certified copies transmitted with Petition.)

In petitioner's Brief filed in the Illinois Supreme Court, the jurisdictional grounds are specified and the constitutional questions are raised and asserted. (Certified copy of Brief, p. 6, 3rd par.; pp. 6-7, 1st par.; p. 7, pars. 1, 2, 3; p. 8, par. 8; p. 9, par. 11; p. 9, 3rd par.; pp. 16-26).

They were raised and asserted in petitioner's Objections and Counter-Suggestions to respondents' motion to dismiss the appeal (pp. 1-3).

Constitutional questions were raised and asserted in petitioner's pleadings in the state trial court. (Abst. 8, par. 13; 51, par. 4; 53, par. 5; Rec. 8, 134, 137).

Constitutional questions are inherent in the judgment order of dismissal of the state trial court (Abst. 61; Rec. 149), and apparent on the face of the Record on Appeal; and are inherent in the judgment order of the Illinois Supreme Court dismissing petitioner's appeal, *viz.*: disregard and denial of the basic constitutional guarantees of Due Process of Law and Equal Protection of the Laws.

Petitioner having taken an appeal direct to the Illinois Supreme Court from the trial court's order of dismissal (Abst. 61-62; Rec. 151), asserted and preserved the constitutional questions involved in this Case.

Under the laws of the State of Illinois, petitioner has no further appellate remedy.

II. The Facts Material to the Questions Presented.

The foregoing statement under the heading of "Procedural History of the Case", in the interest of brevity, is adopted here by reference.

The respondents Gekas and Christoforacos were acquainted since 1950, and were friends. (Abst. 3, pars. 44; Rec. 4, 103, 117). Christoforacos, born in Greece in 1897,

entered the United States via Argentina in 1947 (Abst. 42, 43; Rec. 101, 116, 102, 117). His activities in Greece are indicated by his threat to petitioner on to wit: August 6, 1958, that "There will be another round by the communists in Greece with blood flowing so that a calf could swim". (Abst. 15, par. 4(a); Rec. 13). He worked as a "Tool-Checking Clerk" (Abst. 43; Rec. 102, 117). At all times mentioned in the Complaint, the respondents were representing that Christoforacos had little or no knowledge of English (Abst. 3, par. 6; Rec. 4-5). On December 17, 1958, Christoforacos met Gekas outside his house and left him at 2:00 o'clock in the afternoon. (Abst. 47; Rec. 109, 120). Gekas on that day acted as interpreter, character witness and as additional attorney for Christoforacos, during the criminal prosecution by the People of the State of Illinois against Christoforacos (Abst. 17, 18-20; Rec. 14, 15). During all that time they were conversing, hatching fantastic defamations against the petitioner (Abst. 47; Rec. 109, 120, answers to interrogatories 85 and 86). Since on to wit: August 6, 1958, until January 28, 1959, the petitioner was the target of threats, intimidations, defamations, insults and oppression, specified in Exhibit "B" attached to the Complaint. (Abst. 15-21; Rec. 13-16). Respondent Christoforacos with the help of Gekas, described in said Exhibit "B" (Abst. 18-20; Rec. 15), was discharged during the criminal prosecution trial on December 17, 1958. Respondent Makin who was attorney of record for Gekas in Case No. 1 (Abst. 8; Rec. 27) of this Petition, filed a malicious prosecution suit against the petitioner herein (Abst. 24-26; Rec. 37-42). This petitioner filed an Answer and Counterclaim. (Abst. 26-33, Rec. 43-51; Abst. 13-22, Rec. 12-17). Respondents Gekas and Christoforacos filed motions to strike the Answer and Counterclaim (Abst. 34; Rec. 61-91). Petitioner filed Objections (Abst. 54-64; Rec. 140-145).

The respondents by their motion for involuntary dismissal or judgment on the pleadings or for summary judgment (Abst. 23, 24, 61; Rec. 25, 36, 149) admit:

1. That the defamatory and libelous statements complained of, made in the answers to interrogatories (Abst. 4-7; Rec. 5-7), were published and filed;

2. That they were false and that they were maliciously made, published and filed;

3. That they were fraudulent and corrupt fabrications when made, published and filed, calculated to defame, libel, insult, intimidate and injure the petitioner;

4. That they were known by the respondents, when made, published and filed to be false, immaterial and irrelevant to the issues. (Abst. 6-8; Rec. 6-8).

Reasons for Granting the Writ.

1. "Upon the state courts, equally with the courts of the Union, rests the obligation to guard, enforce, and protect every right granted or secured by the constitution of the United States and the laws made in pursuance thereof, and all treaties made under their authority, as the supreme law of the land, *'anything in the constitution or laws of any state to the contrary notwithstanding'*. If they fail therein, and withhold or deny rights, privileges, or immunities secured by the constitution and laws of the United States, the party aggrieved may bring the case from the highest Court of the state in which the question could be decided, to this court for final and conclusive determination." (*Robb v. Connelly*, 4 S. Ct. 544, 551, 111 U.S. 624, 28 L. Ed. 542.) (Emphasis added.)

2. The denial of rights given by the Due Process and Equal Protection of the Laws Clause of the Fourteenth Amendment need not be by legislation. Its provisions are

generic in terms and are addressed not only to the states, but to every person, whether natural or judicial, who is the repository of state power. The denial of Due Process may be by the judicial as well as by the executive or legislative branches of the state government. (*Shelley* v. *Kraemer*, 68 S. Ct. 836, 842-843, 844, 846, 847, 334 U.S. 1; *Brinckerhoff* v. *Bill*, 281 U.S. 673, 680 and cases cited; *Home Telephone & Telegraph Co.* v. *Los Angeles*, 227 U.S. 278, 286; *Scott* v. *McNeal*, 154 U.S. 34, 45). In *Brinckerhoff*, Mr. Justice Brandeis said (281 U.S. on p. 678):

> "We are of opinion that the judgment of the Supreme Court of Missouri must be reversed, because it has denied to the plaintiff due process of law—using that term in its primary sense of an opportunity to be heard and to defend its substantive right."

In *Ohio Bell Telephone Company* v. *Public Utilities Commission*, 301 U.S. 292, Mr. Justice Cardozo said (p. 305):

> "There can be no compromise on the footing of convenience or expedience or because of a natural desire to be rid of harassing delay, when that requirement has been neglected or ignored."

This Court in *Baltimore & O. R. Co.* v. *United States*, 298 U.S. 349, 56 S. Ct. 797, 807-808, held that "The due process clause assures a full hearing before the Court or other tribunal empowered to perform the judicial function involved. That includes the right to introduce evidence and have judicial findings based upon it." (Citing cases). Petitioner was deprived of this right by the state courts.

In both cases involved in this Petition, through the disguise of filing multitudinous papers under the label of "exhibits", and without proof of their authenticity, contents and materiality, basic constitutional guarantees were ignored and denied. "Manifestly there is no hearing when

the party does not know what evidence is offered or considered and is not given an opportunity to test, explain or refute." (*Interstate Commerce Commission* v. *Nashville R.R. Co.*, 227 U.S. 93.)

This Court in *Napue* v. *People of the State of Illinois*, 360 U.S. 264, 79 S. Ct. 1173, 1178, said:

> "The duty of this Court to make its own independent examination of the record when federal constitutional deprivations are alleged is clear, resting, as it does, on our solemn responsibility for maintaining the Constitution inviolate."

"It is now so well settled that the Court was able to speak in *Kern-Limerick, Inc.* v. *Scurlock*, 347 U.S. 110, 121, 74 S. Ct. 403, 410, 98 L. Ed. 546, of the 'long course of judicial construction which establishes as a principle that the duty rests on this Court to decide for itself facts of constructions upon which federal constitutional issues rest'". (Citing cases).

In *Williams* v. *Buffy*, 96 U.S. 176 this Court said (p. 183):

> "Any enactment from whatever source originating to which a state gives the force of law is a Statute of the State within the meaning of the clause cited relating to the jurisdiction of this Court. It would be a narrow construction to limit the term to such enactments as having gone through various stages of consideration by the legislatures."

Oyama v. *State of California*, 68 S. Ct. 269, 270, 332 U.S. 633;

Norris v. *Alabama*, 294 U.S. 587, 590, 55 S. Ct. 579, 580.

3. In the instant case the state courts have deprived petitioner of the equal protection of the laws. A formula of convenience and expediency was extended to immunize

respondents for intentional malicious wrongs and criminal acts, admitted by the respondents' motions to dismiss. Such formula which is not and could not be authorized by any constitutional provision or legislative enactment, destroys the safeguards of our constitutional system, required to be extended to all. Such formula of immunity or "privilege" assaults and defies the public interest of law and order. No plea of privilege could ever be invoked, to shield one against liability for a wrong deliberately committed. (*White* v. *Nichols*, 3 Howard (44 U.S.) 266, 287, 291; *Clark* v. *United States*, 289 U. S. 1, 15; *Gebhardt* v. *United Rys. Co. of St. Louis*, 220 S.W. 677, 679 (Mo.); *Rausch* v. *Anderson*, 75 Ill. App. 526, 536, 537; *Mills* v. *Denny*, Iowa 63 N.W. 2d 222, 229):

> "The immunity of a privileged communication is the exception, and he who relies upon an exception must prove all the facts necessary to bring himself within it." (*McRae* v. *Afro-American Co.*, 172 F. Supp. 184, 187, affirmed 274 F. 2d 287, citing *Hyman* v. *Lieberman*, 287 Pa. 78, 134 A. 486.)

In the same case the Court said (p. 187):

> "Motive, manner and reasonable cause would have presented questions of fact."
>
> "The question of whether or not the defendant knew or believed that his libelous words were not pertinent and had no relation to the inquiry, or whether he made the statements without reasonable or probable cause, or whether or not his statements were published in good faith, are questions of fact for the jury. This issue, so far as the sufficiency of the complaint is involved, is presented by the affirmative allegations that the libelous words were published with the malicious intent to defame." (*Dayton* v. *Drumheller*, 32 Idaho 283, 182 P. 102, 104-105).

This same formula was also extended by the state courts to immunize the respondents for assault, (Case No. 1) admitted by their motion for summary judgment. No answer was filed to the Complaint and no evidence was heard. In *Ladner* v. *United States*, 358 U.S. 169, 79 S. Ct. 209, 213, it was said that assault is held to be committed "merely by putting another in apprehension of harm whether or not the actor actually intends to inflict or is capable of inflicting that harm."

The right to equal protection of the law is a right which petitioner may demand. In *Hill* v. *State of Texas*, 316 U.S. 400, 406, 62 S. Ct. 1159, this Court said (p. 1162):

> "Equal protection of the laws is something more than an abstract right. It is a command which the State must respect, the benefits of which every person may demand."

Mr. Justice Clark, speaking for the majority of the Court in *Burton* v. *Wilmington Parking Authority*, 365 U.S. 715, 81 S. Ct. 856, said (p. 861):

> "But no State may effectively abdicate its responsibilities by either ignoring them or by merely failing to discharge them whatever the motive may be. It is no consolation to an individual denied the equal protection of the laws that it was done in good faith."

Another extension of the formula of immunity by the state courts depriving the petitioner of equal protection of the laws occurred in Case No. 2, where the respondents were held absolutely privileged for intentionally false, defamatory and malicious answers to written interrogatories. It is well established that interrogatories and answers thereto are not pleadings. *Dunlop Co.* v. *Munter Homes Corp.*, D.C. 33 F. Supp. 242; *Sinclair Refining Co.* v. *Jenkins Petroleum Process Co.*, 289 U.S. 689, 696, 53

S. Ct. 736, 738; D.C. 4 F.R.D. 469; *P. Rielly & Son* v. *National Parlor Furniture Co.*, 192 Ill. App. 395; *Ross* v. *Ross*, 35 N.J. Super. 242, 113 A. 2d 700; 4 Moore's Federal Practice (2d Ed.) par. 33.29 (2). Therefore, no privilege could be asserted for such fantastically false and defamatory answers to interrogatories by the respondents.

In *United States* v. *Bank of New York & Trust Co.*, 296 U.S. 463, 56 S. Ct. 343, this Court said (p. 348):

> "Upon the state courts, equally with the courts of the union, rests the obligation to guard and enforce every right secured by the Constitution and the laws of the United States whenever those rights are involved in any suit or proceedings before them. *Robb* v. *Connelly*, 111 U.S. 624, 637, 4 S. Ct. 544, 28 L. Ed. 542." *Smith* v. *O'Grady*, 61 S. Ct. 572, 573, 312 U.S. 329.

CONCLUSION.

For the reasons above-stated it is respectfully submitted that this Petition for writs of certiorari be granted.

Respectfully submitted,

PETER S. SARELAS.
30 N. La Salle Street,
Chicago 2, Illinois,
Central 6-1442
Petitioner, Pro Se.

APPENDIX A.

UNITED STATES OF AMERICA

State of Illinois } ss.
Supreme Court }

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the eighth day of January, in the year of our Lord, one thousand nine hundred and sixty-two, within and for the State of Illinois.

Present: Harry B. Hershey, Chief Justice

Justice Joseph E. Daily — Justice Walter V. Schaefer
Justice Ray I. Klingbiel — Justice Byron O. House
Justice Roy J. Solfisburg, Jr.

William G. Clark, Attorney General
Robert G. Miley, Marshal

Attest: Mrs. Earle Benjamin Searey, Clerk

BE IT REMEMBERED, that, to-wit: on the 16th day of January, A.D. 1962, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

Peter S. Sarelas,
Appellant
No. 36815 *vs.*
John C. Gekas; and Constantine D. Chapralis, alias Major C. D. Chapralis; and Andrew Cardaras; and George W. Alexander; and Themis Anagnost; and Athanasios A. Pantelis, also known as A. A. Pantelis; and William J. Russis; and Demosthenes I. Georgoulis; and A. Thomas Rangaves; and Demetrios Parry; and Spyros D. Soter, also known as S. D. Soter; and Evangelos Nittis, also known as E. Nittis; and Constantine Mazarakis; and George S. Porikos; and Evangelos C. Despotes; and Themis Tsaoussis; and Adamantios Androutsopoulos; and George A. Xydis; and George Louris,
Appellees.

Appeal from Circuit Court Cook County 58 C 17505

And now, on this day, the Court having diligently examined and inspected as well the record and proceedings aforesaid, as the motion of the appellees to dismiss this appeal and being fully advised of and concerning the premises, are of the opinion that the said appeal is not well taken.

Therefore, it is considered and ordered by the Court that said appeal be and the same is hence dismissed.

And it is further considered by the Court that the said appellees recover of and from the said appellant costs by them in this behalf expended, to be taxed, and that they have execution therefor.

I, Mrs. Earle Benjamin Searcy, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of said Court this 9th day of March, A.D. 1962.

Mrs. Earle Benjamin Searcy
Clerk,

Supreme Court of the State of Illinois.

APPENDIX B.

UNITED STATES OF AMERICA

State of Illinois }
Supreme Court } ss.

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the eighth day of January, in the year of our Lord, one thousand nine hundred and sixty-two, within and for the State of Illinois.

Present: Harry B. Hershey, Chief Justice
Justice Joseph E. Daily — Justice Walter V. Schaefer
Justice Ray I. Klingbiel — Justice Byron O. House
Justice Roy J. Solfisburg, Jr.

William G. Clark, Attorney General
Robert G. Miley, Marshal

Attest: Mrs. Earle Benjamin Searcy, Clerk

BE IT REMEMBERED, that, to-wit: on the 23rd day of January, A.D. 1962, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

Peter S. Sarelas, Appellant, vs. John C. Gekas; *et al.*, Appellees.	Appeal from Circuit Court Cook County 58 C 17505

And now, on this day, the Court having duly considered the motion by appellant for reconsideration of order dismissing this appeal, and being now fully advised of and concerning the premises;

It Is Hereby Ordered that the motion by appellant for reconsideration of order dismissing this appeal be, and the same is, denied.

I, Mrs. Earle Benjamin Searcy, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of said Court this 9th day of March, A.D. 1962.

Mrs. Earle Benjamin Searcy
Clerk,

Supreme Court of the State of Illinois.

APPENDIX C.

UNITED STATES OF AMERICA

State of Illinois }
Supreme Court } ss.

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the eighth day of January, in the year of our Lord, one thousand nine hundred and sixty-two, within and for the State of Illinois.

Present: Harry B. Hershey, Chief Justice

Justice Joseph E. Daily — Justice Walter V. Schaefer
Justice Ray I. Klingbiel — Justice Byron O. House
Justice Roy J. Solfisburg, Jr.

William G. Clark, Attorney General
Robert G. Miley, Marshal

Attest: Mrs. Earle Benjamin Searcy, Clerk

BE IT REMEMBERED, that, to-wit: on the 22nd day of January, 1962, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

Peter S. Sarelas, Appellant No. 37001 *vs.* Phillip S. Makin, alias Phillip S. Marinacos; and Basil Christoforacos, alias Hristos Cokinis; and John C. Gekas, Appellees.	Appeal from Appellate Court First District 60 S 5744 48391

And now, on this day, the Court having diligently examined and inspected as well the record and proceedings aforesaid, as the motion of the appellees to dismiss this

appeal and being fully advised of and concerning the premises, are of the opinion that the said appeal is not well taken.

Therefore, it is considered and ordered by the Court that said appeal be and the same is hence dismissed.

And it is further considered by the Court, that the said appellees recover of and from the said appellant costs by them in this behalf expended, to be taxed, and that they have execution therefor.

I, Mrs. Earle Benjamin Searcy, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of said Court this 9th day of March, A.D. 1962.

Mrs. Earle Benjamin Searcy
Clerk,

Supreme Court of the State of Illinois.

Office-Supreme Court, U.S.
FILED
MAY - 10 - 1962
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Supreme Court of the United States

OCTOBER TERM, 1961

No. 873

PETER S. SARELAS,

Petitioner,

vs.

JOHN C. GEKAS; and CONSTANTINE D. CHAPRALIS, alias Major C. D. Chapralis; and ANDREW CARDARAS; and GEORGE W. ALEXANDER; and THEMIS ANAGNOST; and ATHANASIOS A. PANTELIS, also known as A. A. Pantelis; and WILLIAM J. RUSSIS; and DEMOSTHENES I. GEORGOULIS; and A. THOMAS RANGRAVES; and DEMETRIOS PARRY; and SPYROS D. SOTER, also known as S. D. Soter; and EVANGELOS NITTIS, also known as E. Nittis; and CONSTANTINE MAZARAKIS; and GEORGE S. PORIKOS; and EVANGELOS C. DESPOTES; and THEMIS TSAOUSSIS; and ADAMANTIOS ANDROUTSOPOULOS; and GEORGE A. XYDIS; and GEORGE LOURIS;

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Illinois

BRIEF FOR RESPONDENT THEMIS ANAGNOST IN OPPOSITION

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The Scheffer Press, Inc.—ANdover 3-6850

Supreme Court of the United States

OCTOBER TERM, 1961

No. 873

PETER S. SARELAS,

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JOHN C. GEKAS; and CONSTANTINE D. CHAPRALIS, alias Major C. D. Chapralis; and ANDREW CARDARAS; and GEORGE W. ALEXANDER; and THEMIS ANAGNOST; and ATHANASIOS A. PANTELIS, also known as A. A. Pantelis; and WILLIAM J. RUSSIS; and DEMOSTHENES I. GEORGOULIS; and A. THOMAS RANGRAVES; and DEMETRIOS PARRY; and SPYROS D. SOTER, also known as S. D. Soter; and EVANGELOS NITTIS, also known as E. Nittis; and CONSTANTINE MAZARAKIS; and GEORGE S. PORIKOS; and EVANGELOS C. DESPOTES; and THEMIS TSAOUSSIS; and ADAMANTIOS ANDROUTSOPOULOS; and GEORGE A. XYDIS; and GEORGE LOURIS;

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Illinois

BRIEF FOR RESPONDENT THEMIS ANAGNOST IN OPPOSITION.

In *Sarelas* v. *Gekas, et al.*, to which this respondent is a party, (designated as Case No. 1 in the petition), the petitioner filed a complaint which alleged two causes of action—one, for defamation, and the other, for assault and battery (Abst. 1-5; 122-3). The trial judge struck the portions alleging the action for defamation, granting leave

to file an amended complaint as to this cause of action, and entered a summary judgment as to the assault and battery action (Abst. 122-3). Sarelas appealed this order to the Supreme Court of Illinois (Abst. 123-5) which promptly dismissed the appeal, upon appellees' motion (Ptn. App. "A", p. 2) This action is the subject of Sarelas' petition in this Court.

QUESTION PRESENTED.

Will this Court accept jurisdiction to review a decision of the highest court of the State of Illinois that it has no jurisdiction to consider an appeal on its merits because, as a matter of Illinois practice and procedure, the order appealed to it was not final and appealable?

This respondent contends—"Obviously, No!"

STATUTE INVOLVED.

Section 50(2)

Illinois Civil Practice Act

[Ill. Rev. Stats. (1961) c. 110, par. 50(2)]

"If multiple parties or multiple claims for relief are involved in an action, the court may enter a final order, judgment or decree as to one or more but fewer than all of the parties or claims only upon an express finding that there is no just reason for delaying enforcement or appeal. In the absence of that finding, any order, judgment, or decree which adjudicates fewer than all of the claims . . . does not terminate the action, is not enforceable or appealable and is subject to revision at any time before the entry of an order, judgment or decree adjudicating all the claims, rights and liabilities of all the parties."

STATEMENT OF THE CASE

The complaint states two causes of action, or claims, by Sarelas against numerous defendants (Abst. 1-5). The trial court disposed of the action for assault and battery by entering a summary judgment as to that cause of action *only* (Abst. 123). It then held that the complaint should be stricken because the cause of action for defamation was defectively stated—but the order gave Sarelas leave to file an amended complaint in thirty days (Abst. 123). Instead of amending, Sarelas appealed from that order (Abst. 124-6). No judgment has ever been entered as to the defamation action.

In Illinois, an order sustaining a demurrer, or motion to strike, has never been appealable when leave to plead further is granted [See: *Livingston County Building & Loan Ass'n* v. *Keach*, 213 Ill. 59, 72 N.E. (2d) 769; *Giagos* v. *Eich*, 56 Ill. 297; *Knapp* v. *Marshall*, 26 Ill. 63].

Thus, the order appealed from disposed of one cause of action (assault and battery), but not the other (defamation). Section 50(2) of the Illinois Civil Practice Act prohibits appeals until the trial court disposes of the entire case unless the trial court makes an express finding that no just reason exists for delaying the appeal. No such finding was made (Abst. 122-3).

Paragraphs B(1), B(2) and C of the motion to dismiss the appeal, or for other relief, called this defect to the Illinois Court's attention (Motion, pp. 3-5). The motion to dismiss was promptly granted (Ptn., App. "A", p. 2).

REASONS FOR DENYING THE WRIT.

The Illinois Supreme Court clearly, and most correctly, held, as a matter of Illinois practice and procedure, that the trial court's order was not final and appealable. Without regard to whether Sarelas' claimed federal questions are more than ephemeral, the fact is that this Court has consistently declined to exercise its jurisdiction where the state court's decision is based upon principles of local practice and procedure (*C.I.O.* v. *McAdory*, 325 U.S. 472, 477; *Parker* v. *Illinois*, 333 U.S. 571; *See also:* cases cited, Robertson & Kirkham, *Jurisdiction of the Supreme Court of the United States* (Wolfson & Kurland ed., 1951) p. 189, at notes 21 and 22).

In *John* v. *Paulin*, 231 U. S. 583, at 585, this Court said:

> "Without any doubt it rests with each state to prescribe the jurisdiction of its appellate courts, the mode and time of invoking that jurisdiction, and the rules of practice to be applied in its exercise; and the state law and practice in this regard are no less applicable when Federal rights are in controversy than when the case turns entirely upon questions of local or general law."

CONCLUSION.

Sarelas v. *Gekas* presents nothing for this Court to review. Therefore, the petition should be denied as to that case.

Respectfully submitted,

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Office-Supreme Court, U.S.
FILED
MAY 11 1962
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, A.D. 1961

No. 873

PETER S. SARELAS,

Petitioner,

vs.

PHILLIP S. MAKIN, alias Phillip S. Marinacos; and BASIL CHRISTOFORACOS, alias Hristos Cokinis; and JOHN C. GEKAS,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI IN BEHALF OF RESPONDENT, JOHN C. GEKAS.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A.D. 1961

No. 873

PETER S. SARELAS,

Petitioner,

vs.

PHILLIP S. MAKIN, alias Phillip S. Marinacos; and BASIL CHRISTOFORACOS, alias Hristos Cokinis; and JOHN C. GEKAS,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI IN BEHALF OF RESPONDENT, JOHN C. GEKAS.

The respondent, John C. Gekas, respectfully states that the petitioner is not entitled to have his petition allowed and is not entitled to the writ of certiorari prayed for by him.

ORDERS AND OPINIONS.

The order of the Trial Court dismissing petitioner's complaint on the court's motion (pages 60-61 of the Abstract).

Order of the Supreme Court of Illinois transferring the cause to the Appellate Court of Illinois, First District. (Abst. 67; contents of the order are not given).

Opinion of the Appellate Court of Illinois, First District (Petitioner's Brief Pages 45-50, filed with the Clerk of the Supreme Court of Illinois).

The judgment of the Appellate Court of Illinois, First District, is not given in the petition. It is quoted as Exhibit A to this brief (Page 1a).

Order of the Supreme Court of Illinois (Appendix C of Petitioner's Brief) dismissing petitioner's appeal.

JURISDICTION.

The petitioner gives no ground that could constitute a basis for this Honorable Court to take jurisdiction of the case.

1. There is no constitutional question involved where the validity of a statute is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or otherwise.

2. The petitioner did not properly and timely raise any Federal question in the trial court, the trial court did not consider any such question, and its order is devoid of any reference to any Federal or constitutional question upon which the petitioner's claims can be based.

3. The petitioner by the first appeal to the Supreme Court of Illinois, where for the first time he raised a Federal and constitutional question and where the Supreme Court of Illinois transferred the cause to the Appellate Court of Illinois, First District, thus refusing to take jurisdiction of the appeal waived all errors, and the petitioner is conclusively bound by the court's ruling that there is no constitutional question in the case.

4. The record shows that there was no constitutional or Federal question presented to the trial court, that if was not preserved or considered by the Appellate Court, and that the opinion and the judgment of the Appellate Court do not mention any of such questions.

5. There being no constitutional or Federal question in the case, the petitioner was bound by the requirements of Appellate procedure of the State of Illinois to petition

for leave to appeal to the Supreme Court of Illinois instead of which he filed a direct appeal to the Supreme Court of Illinois. The Supreme Court of Illinois entered an order, without opinion, sustaining the motion of the respondents to dismiss petitioner's appeal, which petitioner now asks this Honorable Court to review.

QUESTIONS PRESENTED.

A. Shall a petition for a writ of certiorari be granted where a petitioner does not properly and timely raise any constitutional or Federal question at the trial court and where the petitioner fails to follow the necessary procedure to present and preserve a Federal or constitutional question for the reviewing courts to consider?

B. Is this a frivolous appeal carried on for the purposes of harassment and delay?

C. Should a petition for a writ of certiorari be denied when it is shown that it asks that the writ should be directed to the Supreme Court of Illinois (which denied to take jurisdiction of the case and which did not render an opinion) and when it should have been directed to the Appellate Court of Illinois, First District, which rendered an opinion and judgment, and when its records should have been certified and brought before this Honorable Court rather than the records of the Supreme Court of Illinois?

STATEMENT OF THE CASE.

This is a suit for damages arising out of an alleged defamation alleged to have been committed during the course of the lawsuit between Christoforacos, one of the respondents, and the petitioner. Christoforacos had filed a suit against the petitioner for malicious prosecution. The petitioner filed a counterclaim, making Makin, Christomoracos' lawyer, in the said suit, a defendant, and Gekas as their conspirator to defame him. During the course of the suit the petitioner propounded written interrogatories to Christoforacos about a letter which he had written to the petitioner (Abst. 16). The written and verified answers to the said interrogatories (Abst. 42-50) is the basis of this suit, which was filed while the first above mentioned suit was pending.

During the said prior suit the petitioner asked leave to file a supplementary complaint basing his claim of defamation on the above mentioned answers. His oral motion was denied and he was given leave to withdraw it (Abst. 50). Then petitioner filed a motion to strike the said answers and hold Christoforacos in contempt of court, claiming that the answers were defamatory, irrelevant, impertinent and immaterial (Abst. 50). The court denied that motion. Later the respondents made separate motions in each case for a judgment on the pleading, or to strike the counterclaim of the petitioner, and dismiss his suit now before this Honorable Court, or for summary judgment. The court tried those motions together, even though one was filed in the Circuit Court and the other in the Superior Court of Cook County, under the system whereby the trial calendars of both courts were consolidated.

The trial court, on its own motion, dismissed both cases.

Neither of the parties appealed from the order of dismissal of the first case.

The petitioner appealed the instant case directly to the Supreme Court of Illinois, claiming that it must take jurisdiction of the case because his constitutional rights were violated. In this appeal we had difficulty with him. Though the cases were tried together, he induced the Clerk of the Superior Court not to include the record of the first case in the preparation of the record for appeal (Abst. 64). Upon petition, the Honorable Supreme Court of Illinois allowed the record of the first suit to be made a part of the record on appeal of the instant suit, and the respondents filed an additional abstract of that record. Both sides filed briefs and the Honorable Supreme Court of Illinois transferred the case to the Appellate Court of Illinois, First District, because it was improperly brought to the Supreme Court. The record was transferred by the Supreme Court of Illinois to the Appellate Court, together with the abstracts, several motions, orders and briefs of both parties. The Honorable Appellate Court of Illinois rendered its opinion (Petitioner's Brief Pages 45-50) and a judgment (Respondent's Brief Page 3a).

After the judgment of the Appellate Court, the petitioner filed a petition for rehearing, or for certificate of importance. Both were denied. Then he filed his appeal to the Supreme Court of Illinois. In this appeal he filed new abstracts and new briefs, now certified and filed with the clerk of this Honorable Court, but he completely failed to abstract the record of the first suit. The Honorable Supreme Court of Illinois, on motion of the respondents, entered the order complained of (Appendix C of petitioner's brief).

The petitioner filed petitions for a rehearing and to stay the mandate. Both were refused.

In his present petition the petitioner states "constitutional questions were raised and drawn in petitioner's pleading in the State Trial Court" (Abst. 27). That is not correct. In paragraph 13 of his complaint (Abst. 8) he only states: "his right of being guaranteed by the laws of the State of Illinois were continuously and constantly attacked, undermined, and endangered by the above described diabolical, malignant and wrongful acts." In paragraph 4 (Abst. 51) and paragraph 5 (Abst. 53) he states, that each of the motions of the respondents "is made in bad faith and interposed for purposes of obstructing the due administration of justice."

No Federal question was ever raised by him in the trial court, and no other claim or violation of any Federal law or constitution, and no question was raised about the validity of any statute. For the first time in his appeal he raises these questions in his brief, and in that he is very unclear as to when, where and how such violations were committed.

In his statement in his brief before the Supreme Court of Illinois of the theory of his case he claims that the Appellate Court's affirmance of the order of the Trial Court violates his "right to due process of law and the equal protection of the laws which are guaranteed by Section 1 of the 14th Amendment to the Federal Constitution and Section 2 of Article 2 of the Illinois Constitution." He says: "This Honorable Court (Supreme Court of Illinois) has jurisdiction of the appeal because the Appellate Court's Judgment and its Decision deprive the plaintiff of the basic constitutional guarantees to Due Process of Law, Equal Protection of the Laws, the right to Jury Trial and to a Remedy for all injuries and wrongs to his person and repu-

tation which is guaranteed by Section 19, Article II, of the Constitution of Illinois.' "

• • • • •

"The Appellate Court's consideration of documents dehors the complete authenticated Record on Appeal, from other courts and other cases, never consolidated, violates plaintiff's constitutional guarantees to Due Process and Equal Protection of the Laws."

The rest of his grounds, upon which he claims the Supreme Court of Illinois has jurisdiction of his case, (Petitioner's Brief, Pages 6, 7) refer to the Constitution and laws of the State of Illinois. Nowhere it is shown in what manner or fact, or how the Appellate Court opinion deprived him of his constitutional rights to due process of law and equal protection of the laws guaranteed to him by the Federal laws and Constitution.

The Appellate Court affirmed the order or judgment of the Trial Court on grounds exclusively involving state law and law of pleading (Respondent's Brief Page 3a). For the first time in his brief in the Supreme Court of Illinois he raises the construction of Section 48 of the Civil Practice Act (110, Sec. 48) as its being contrary to the Constitution of the State of Illinois and for the first time in his brief before the Supreme Court of Illinois (page 7) he says that the affirmance of the order of the Trial Court under Sec. 48(1)(i) contravenes the provisions of Sec. 43(4) of the same Civil Practice Act, but does not state how or in what manner, and he does not state any violation of the Federal laws by that order or judgment, except, he says, such dismissal "violates plaintiff's constitutional guarantees to due process and equal protection of the laws", but does not refer to the Federal laws.

ARGUMENT.

We respectfully assert that the petitioner does not present with accuracy, brevity and clearness what is essential to a ready and adequate understanding of the case. He confuses the facts in both cases and intermingles his argument about them. He argues his points on the law as if the law of the State of Illinois is the same as the Federal law and that this Honorable Court has power and authority to correct decisions of the Supreme Court of Illinois on matters pertaining exclusively to State law.

The petition is devoid of merit, and frivolous.

In the first place, he does not and he did not raise any constitutional question in the trial court. He did not attack the validity of any statutes. He did not specifically point out or single out any particular statute that was contrary to the provisions of either the Federal or State constitutions, or how each was violated by the trial court's order. He did not raise any question of the validity of any provision of any statute as to it being repugnant to the constitution of the State of Illinois, or to any Federal statute, or to the Federal Constitution.

Petitioner's claim (page 27 of his brief) that he raised and asserted the constitutional question before the State trial court in his pleading is unfounded, for such vague expressions referred to in his brief have been adjudicated to be wholly insufficient[1].

---

[1] The raising of the constitutional or federal question must not be a formal one. It must be a substantial question and not frivolous. *Equitable Life Assurance Society v. Brown*, 187 U.S. 308, 311; *Pennsylvania R.R. Co. v. Illinois Brick Co.*, 297 U.S. 447, 462.

A mere assertion that a constitutional question is involv-

In the second place, the petitioner seeks a writ of certiorari to the Supreme Court of Illinois when it is not the

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(2) *Continued*

ed, or a constitutional right was invaded, is not in itself sufficient to confer jurisdiction. *People* v. *Estep*, 97 N.E. (2) 823, 825; 409 Ill. 125, certiorari denied, 73 S. Ct. 1112; 345 U.S. 970.

A general assertion that petitioner's constitutional rights have been violated or that a Statute is unconstitutional is not sufficient to confer jurisdiction on the Supreme Court. *Sena* v. *Franke*, 20 Ill. (2) 70; 169 N.E. (2) 335, 337.

In *Bowe* v. *Scott*, 233 U.S. 658, 664, it is stated; " 'That the ordinance is an attempt to take from your complainants whose property adjoins and abuts upon the said alley their rights in and to said alley without due process of law.' But it is settled that such an averment making no reference to the Constitution of the United States and asserting no express rights thereunder is solely referable to the state constitution, which in this instance has a due process clause, and affords no basis whatever for invoking the jurisdiction of this court. *Miller* v. *Cornwall R.R. Co.*, 168 U.S. 131, 134; *Harding* v. *Illinois*, 196 U.S. 78."

In *New York Central R.R. Co.* v. *New York*, 186 U.S. 269, at 273, it is stated: "But assuming, without intimating an opinion to that effect, that the raising of a Federal question in the brief might be sufficient, it is well settled in this court that it must be made to appear that some provision of the Federal, as distinguished from the state, Constitution was relied upon, and that such provision must be set forth."

It must appear affirmatively from the record that a Federal question was presented to the highest court for decision; that its decision of the Federal question was necessary to the determination of the case and that the Federal question was actually decided or that the judgment rendered could not have been rendered without deciding it. *Southwestern Bell Tel. Co.* v. *Oklahoma*, 303 U.S. 206, 212. The Federal question cannot be deduced by inference. *Orley Store Co.* v. *Butler Co.*, 166 U.S. 648, 655; *Thomas* v. *State of Iowa*, 209 U.S. 258; *Sena* v. *Franke*, 169 N.E. (2) 335; 20 Ill. (2) 70.

proper court to which the writ should be directed, for it is not the highest court which rendered a decision and entered the judgment from which a review is sought. In order to review any judgment or decision there must be one. In this case the Supreme Court of Illinois did not render any decision or judgment. It merely entered an order sustaining the motion of the respondents to dismiss the appeal.

In the first appeal the Supreme Court of Illinois refused to take jurisdiction of the case and transferred it to the Appellate Court. In the second appeal it dismissed his appeal because it was not well taken. It did not decide the merits of the case. It expressed no opinion on the matter. If there were a constitutional or Federal question raised, the Supreme Court of Illinois would have had to take jurisdiction, would have had to render an opinion and judgment that there was a constitutional question involved in the matter. It did not do so. It declined to take jurisdiction. So, it left the matter as it was decided by the Appellate Court[2].

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[2] *Michigan-Wisconsin Line* v. *Calvert*, 347 U.S. 157, 161; *American Ry. Express Co.* v. *Levee*, 263 U.S. 19, 20-21; *Chesapeake & Ohio Ry. Co.* v. *Mihas*, 280 U.S. 103; 279 U.S. 827; *Newman* v. *Gates*, 204 U.S. 89; *Ancolin* v. *Atlas Exchange National Bank*, 295 U.S. 209, 210; *Senko* v. *LaCrosse Dredging Corp.*, 352 U.S. 370, 371.

The petitioner must first exhaust his remedy by petition for leave to appeal. (*Matheus* v. *Huxo*, 269 U.S. 262; *Stratton* v. *Stratton*, 239 U.S. 55).

The petition should be dismissed because the court has not the full record before it. (*Hedgebeth* v. *North Carolina*, 334 U.S. 806).

The trial court may sometimes be the highest court to which the writ may be directed. (*Chicago & Eastern Ill. R.R. Co.* v. *Industrial Comm. of Illinois*, 284 U.S. 296; *United States* v. *Richmond*, 177 Fed. Supp. 504, 507).

In the third place, the entire record, properly certified by the proper court, has not been abstracted. The record before the Appellate Court on which it rendered its decision and judgment, is the one that must be brought before your Honors. That is the record on which both the Trial Court and the Appellate Court based their respective orders and decisions.

The opinion of the Appellate Court reveals and reflects that it considered the record in the prior suit. The record in the prior suits supplies a full background that gave to the Trial Court and to the Appellate Court the full meaning of the dispute between the parties. The purpose and the intent of the petitioner in filing his counterclaim in the prior suit, and in filing this suit while the prior suit was pending, will be revealed.

The Appellate Court states in its opinion (Brief 49):

* * * * * *

> "Moreover, we note that plaintiff petitioned the Circuit Court (the prior suit) to strike the answers in controversy on the grounds that they were in bad faith, impertinent, inapplicable and libelous per se. The trial judge in that court denied the motion."

The bad faith of Christoforacos in answering the questions, and the questions and answers themselves, must be considered in view of the whole record. Their pertinency and applicability cannot possibly be determined without the whole record being before this Honorable Court, as it was before the Trial and Appellate Courts.

The above quotation of the order of the Trial Court in the prior suit is res judicata against the petitioner as to the relevancy, applicability, materiality and pertinency, for he did not appeal from the decision of the Trial Court. The petitioner is foreclosed by the rule of estoppel by

verdict from ever raising that question again. *Hanna* v. *Read, et al.*, 102 Ill. 596, 602; *Bfauer Machine etc. Co.* v. *Darling Trucking Co.*, 383 Ill. 569, 574.

In the fourth place the Supreme Court of Illinois decided that there was no constitutional question involved in first appeal of the case and transferred it to the Appellate Court. The Supreme Court did not have jurisdiction of the case because the constitutional question was not raised at the trial, and its decision was not based upon any consideration of any question concerning any Federal statute or the Federal Constitution. No such question was properly preserved. The record wholly failed to show the procedural requirement that would give jurisdiction of the case to the Supreme Court of Illinois. There is no fairly disputed constitutional question presented in the case and such must be affirmatively shown by the record. The court itself is bound to refuse to take jurisdiction of the case when it sees that there is no constitutional question involved or drawn in question. The transfer of the case to the Appellate Court removes from consideration any constitutional question or any Federal question(3).

(3) *Board of Education, et al. v. Pacific National Fire Insurance Co.*, 153 N.E. (2) 498, 19 Ill. App. 2d 290; *Group Securities, Inc.* v. *Carpentier*, 147 N.E. (2) 360; *Schuman* v. *Department of Registration and Education*, 133 N.E. (2) 551, 553, 9 Ill. App. 2d 504, Certiorari Denied 352 U.S. 1001; *Village of Lansing* v. *Hacker*, 130 N.E. (2) 265, 7 Ill. (2) 258; *Community Unit School District No. 6* v. *County Board*, 128 N.E. (2) 898, 6 Ill. (2) 320; *In re Webster's Estate*, 171 N.E. (2) 24, 21 Ill. (2) 54; *Sitelis* v. *Mouhelis*, 141 N.E. (2) 92, 13 Ill. A. (2) 131; *City of Chicago* v. *Campbell*, 170 N.E. (2) 19, 20, 27 Ill. A. (2) 456; *People* v. *Taylor*, 172 N.E. (2) 519, 29 Ill. A. (2) 143; *Wladek* v. *Sedlacek*, 174 N.E. (2) 705, 30 Ill. A. (2) 351.

This Honorable Court has approved that practice of the State of Illinois(*).

In the case of *Lynch* v. *New York*, 293 U.S. 52, at page 54, this Honorable Court says:

> "It is essential to the jurisdiction of this Court in reviewing a decision of a court of a State that it must

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(*) It must be clear that a Federal question appears in the record. If the decision is based on two different grounds, one of which is based upon the State law and it is fully sufficient to sustain the decision, this Honorable Court will not take jurisdiction. The same rule applies as in this case where the State court did not render an opinion. *Lynch* v. *New York*, 293 U.S. 52, 54-55; *Herb* v. *Pitcain*, 324 U.S. 117, 125-126; *Berea College* v. *Kentucky*, 211 U.S. 45; *Fox Film Corp.* v. *Mueller*, 296 U.S. 207, 210.

The ruling of the State court on questions of pleadings will not be reviewed by the Supreme Court of the United States. *Brinkmeier* v. *Missouri Pacific R.R. Co.*, 224 U.S. 268.

When the judgment of the court of the State of Illinois is rested on ground sufficient to sustain its decision, the Supreme Court of the United States will not take jurisdiction. (*Radio Station WOW, Inc.* v. *Johnson*, 326 U.S. 120).

It appearing that the Honorable Supreme Court of Illinois did not deliver an opinion and since it appears that the judgment of the court might have rested upon non-Federal ground, this Honorable Court does not take jurisdiction to review the judgment of the Trial Court. (*Stembridge* v. *Georgia*, 343 U.S. 541; *Chicago* v. *Willett Co.*, 341 U.S. 913; *Lottes* v. *Illinois*, 334 U.S. 804).

The petitioner did not comply with the jurisdictional and procedural requirements of the State of Illinois and thus he waived the right to raise either State or Federal Constitutional questions. (*Central Union Co.* v. *Edwardsville*, 269 U.S. 190, 194-195; *Pennsylvania Railroad Co.* v. *Illinois Brick Co.*, 297 U.S. 447, 462-5; *Packer* v. *Illinois*, 222 U.S. 571, 574-5; *Edelman* v. *California*, 344 U.S. 357; *Hulbert* v. *City of Chicago*, 202 U.S. 275-277).

appear affirmatively from the record, not only that a federal question was presented for decision to the highest court of the State having jurisdiction but that its decision of the federal question was necessary to the determination of the cause, and that it was actually decided or that the judgment as rendered could not have been given without deciding it. *De Saussure v. Gaillard*, 127 U.S. 216, 234; *Johnson v. Risk*, 137 U.S. 300, 306, 307; *Wood Mowing & Reaping Machine Co. v. Skinner*, 139 U.S. 293, 295, 297; *Eustis v. Bolles*, 150 U.S. 361, 366, 367; *Whitney v. California*, 274 U.S. 357, 360, 361; *Mellon v. O'Neil*, 275 U.S. 212, 214. Where the judgment of the state court rests on two grounds, one involving a federal question and the other not, or if it does not appear upon which of two grounds the judgment was based, and the ground independent of a federal question is sufficient in itself to sustain it, this Court will not take jurisdiction. *Allen v. Arguimbau*, 198 U.S. 149, 154, 155; *Johnson v. Risk*, supra; *Wood Mowing & Reaping Machine Co. v. Skinner*, supra; *Consolidated Turnpike Co. v. Norfolk & Ocean View Ry. Co.*, 228 U.S. 596, 599; *Cuyahoga River Power Co. v. Northern Realty Co.*, 244 U.S. 300, 302, 304; *Durlen v. Mayo*, 351 U.S. 277, 281."

In the fifth place the petitioner did not properly and fully exhaust the procedural remedy for review given him by the Civil Practice Act of Illinois. He filed a direct appeal from the judgment of the Appellate Court to the Supreme Court of Illinois when he should have filed a petition with the Supreme Court of Illinois for leave to appeal.

Sec. 75 of the Civil Practice Act (Chap. 110) provides that.

> "Appeals shall be taken directly to the Supreme Court (a) in all cases in which a franchise or freehold or the validity of a statute or a construction of the Constitution is involved."

If the case does not fall within that provision and the losing party does not file a petition for leave to appeal, the decision of the Appellate Court is final. The petitioner could not appeal directly to the Supreme Court of Illinois unless a constitutional question arose in the proceedings and in the judgment of the Appellate Court. The Appellate Court, after the cause was transferred to it by the Supreme Court, could not and did not consider any constitutional question. Its opinion is wholly silent on that subject and, therefore, there was no constitutional question created in the proceedings of the Appellate Court that would have justified the Supreme Court of Illinois to take jurisdiction of the case. It dismissed the appeal of the petitioner, stating that his appeal was not well taken. This rule existed prior to the adoption of Sec. 75 of the Civil Practice Act and Rule 32 of the Supreme Court of Illinois[5].

In the sixth place, the petitioner did not include in his abstract the full text of the judgment entered by the Appellate Court of Illinois, First District. It appears on page 3a of this brief.

In the case of *Biagi* v. *O'Connor*, 163 N.E. (2) 461, at page 463; 18 Ill. (2) 238, the court says:

> "This court's jurisdiction, however, is based only on constitutional questions necessarily presented by the Appellate Court's judgment, not by questions suggested by the reasoning which led that court to its decision. *Kamienski* v. *Bluebird Air Service, Inc.*, 389 Ill. 462, 59 N.E. 2d 853; see *Wilson* v. *Chicago &*

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[5] *Cummings-Landau Laundry Machinery Co.* v. *Koplin, et al.*, 54 N.E. (2) 462, at page 464; 386 Ill. 368; *Abrams, et al.* v. *Awotin*, 57 N.E. (2) 464, at 466-467; 368 Ill. 42; *Compass Sales Corporation* v. *National Mineral Co.*, 57 N.E. (2) 888, at pages 889-890; 388 Ill. 281; *Bradford Supply Co., Inc.* v. *Waite*, 64 N.E. (2) 491; 392 Ill. 318.

Western Indiana Railroad Co., 363 Ill. 81, 1 N.E. 2d 224."

In the case of *Kane v. Kremer et al*, 169 N.E. (2) 357, at page 359; 20 Ill. 2d 148, the Supreme Court of Illinois again says:

> "It is well settled that jurisdiction of this court is based only on constitutional issues necessarily presented by the Appellate Court's judgment. It is not enough that constitutional questions may be suggested by the reasoning which influenced the court in reaching its decision. *Biagi v. O'Connor*, 18 Ill. 2d 238, 163 N.E. 2d 461; *Kamienski v. Bluebird Air Service, Inc.*, 389 Ill. 462, 59 N.E. 2d 853, 854."

The Civil Practice Act of Illinois now requires that any review of a judgment of the Appellate Court must be had by petition for leave to appeal. The requirement that a constitutional question must arise in the Appellate Court to give the right for direct appeal to the Supreme Court — still prevails. The petitioner did not comply with rule 32 of the Supreme Court of Illinois; nor did he comply with Section 75 of Chapter 110 of the Ill. Rev. Statutes. He has therefore waived his right to ask for a writ of certiorari.

CONCLUSION

Wherefore, for the reasons aforesaid, the petition of the petitioner for a writ of certiorari should be denied.

Respectfully submitted,

JOHN C. GEKAS, *Pro Se*.

JAMES P. ECONOMOS,
Of Counsel.

APPENDIX.

EXHIBIT A

"101:32 (Supreme Court Rule 32). Appeals from the Appellate Court to the Supreme Court.

(1) The party applying for leave to appeal from an Appellate Court shall file a petition in this court, stating therein the reasons for and grounds of appeal. The clerk of this court shall thereupon transmit a certificate of the filing of the petition to the clerk of the Appellate Court who shall transmit to the clerk of this court the record which was transmitted to the Appellate Court with a certified copy of the record of the Appellate Court appended thereto. In case the leave is not granted the record shall be returned forthwith to the clerk of the Appellate Court.

The petitioner shall file with his petition an abstract of the record as prescribed by rule. The petition shall be printed in the manner prescribed for briefs.

The petition shall contain a statement of the points relied upon for a reversal of the judgment, together with authorities and suggestions, concisely stated, in support of the points, a prayer for leave to appeal, and a statement of the date upon which the judgment of the Appellate Court became final. The petition shall contain, or have attached thereto, a printed copy of the opinion of the Appellate Court. If the facts are correctly stated in the opinion they shall not be restated in the petition. If the facts are not so stated, the petitioner may, preliminary to his

statement of points, note the inaccuracy or insufficiency and correct or supply the same.

A petition violating this rule will be stricken.—

Fifteen copies of the petition and abstract, with proof of service, shall be filed within the time provided by statute. The respondent may file 15 printed copies of an answer to the petition, with proof of service, within the time provided by statute. The answer shall state briefly the points and authorities relied upon to meet or obviate the points of the petitioner, and to sustain the judgment. No reply to the answer shall be filed.

* * * * * *

(3) In all criminal cases and in civil cases when notice of appeal as of right is filed in the Appellate Court the clerk shall, not later than 15 days thereafter, transmit to the clerk of this court the same record as provided in this rule in cases of leave to appeal, together with certified copies of the notice of appeal and the proof of service. If the record has theretofore been transmitted to this court on petition for leave to appeal or on appeal by certificate of importance the clerk of the Appellate Court shall transmit only the certified copies of the notice of appeal and proof of service, which, together with the record theretofore filed in this Court, shall stand as the record on both appeals, without order of court."

(Appendix)

EXHIBIT B

At A Term Of The Appellate Court, begun and held at Chicago, on Tuesday, the Third day of October, in the year of our Lord, One Thousand Nine Hundred and Sixty-One, within and for the First District of the State of Illinois:

Present,

The Honorable Arthur J. Murphy, Presiding Justice;
" " Henry L. Burman, Justice;
" " Robert E. English, Justice.

Leslie V. Beck, Clerk — Frank G. Sain, Sheriff

Peter S. Sarelas,
Appellant

No. 48391 vs.

Phillip S. Makin alias Phillip S. Marinacos; and Basil Christoforacos alias Hristos Cokinis; and John C. Gekas;
Appellees.

Monday, October 16th A.D. 1962

Error to .....

Appeal from Cook Superior

Superior Court No. 60 S 5744

On this day came again the said parties, and the Court having diligently examined and inspected, as well the record and proceedings aforesaid, as the matters and things therein assigned for Error, and being now sufficiently advised of and concerning the premises, for that it appears to the Court now here, that neither in the Record and proceedings aforesaid, nor in the rendition of the judgment aforesaid, is there anything erroneous, vicious or defective and that in the Record there is no Error. Therefore, it is

considered by the Court that the judgment aforesaid, be Affirmed in all things, and stand in Full Force And Effect, notwithstanding the said matters and things therein assigned for Error. And it is further considered by the Court that the said Appellees recover of and from the said Appellant, their costs, by them in this behalf expended, to be taxed, and that they have execution therefor.

I, Leslie V. Beck, Clerk of the Appellate Court of the First District of the State of Illinois, and keeper of the records, files and seals thereof, Do Hereby Certify, that the foregoing is a true copy of the final order of the said Appellate Court in the above entitled cause of record in my office.

In Testimony Whereof, I have set my hand and affixed the seal of the said Appellate Court, at Chicago, this Twenty-First day of March in the year of our Lord One Thousand Nine Hundred and Sixty-Two.

Leslie V. Beck (signed)
Clerk of the Appellate Court
of the First Dist., Illinois.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A.D. 1961

No. 873

PETER S. SARELAS,

Petitioner,

vs.

JOHN C. GEKAS and CONSTANTINE D. CHAPRALIS; alias Major C. D. Chapralis; and ANDREW CARDARAS; and GEORGE W. ALEXANDER; and THEMIS ANAGNOST; and ATHANASIOS A. PANTELIS, also known as A. A. Pantelis; and WILLIAM J. RUSSIS; and DEMOSTHENES I. GEORGOULIS; and A. THOMAS RANGAVES; and DEMETRIOS PARRY; and SPYROS D. SOTER, also known as S. D. Soter; and EVANGELOS NITTIS, also known as E. Nittis; and CONSTANTINE MAZARAKIS; and GEORGE S. PORIKOS; and EVANGELOS C. DESPOTES; and THEMIS TSAOUSSIS; and ADAMANTIOS ANDROUTSOPOULOS; and GEORGE A. XYDIS; and GEORGE LOURIS,

Respondents.

BRIEF IN BEHALF OF CERTAIN RESPONDENTS IN OPPOSITION TO THE PETITION FOR CERTIORARI.

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IN THE

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OCTOBER TERM, A.D. 1961

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PETER S. SARELAS,

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Respondents.

BRIEF IN BEHALF OF CERTAIN RESPONDENTS IN OPPOSITION TO THE PETITION FOR CERTIORARI.

IMPROPER JOINDER OF TWO CASES IN THE PETITION.

The petitioner has improperly joined two cases in his request for separate writs of certiorari, for the cases do not involve identical or closely related questions.

We have filed separate briefs in which the dissimilarity of the cases is shown.

ORDER OF THE SUPREME COURT OF ILLINOIS.

The Supreme Court of Illinois states that they were "of the opinion that said appeal is not well taken" * * * and the same is hence dismissed." * * * and the motion by appellant for reconsideration of order dismissing this appeal be and the same is denied." (Petitioner's Appendix, Exhibits A & B)

The order of the Trial Court, from which the petitioner prayed an appeal to the Supreme Court of Illinois, which is now before this Honorable Court for consideration, appears on pages 122-123 of the Abstract.

JURISDICTION.

(1) We respectfully submit that this Honorable Court should not take jurisdiction of this case for the validity of a Federal Treaty or statute is not drawn in question and there is no Federal constitutional question involved in this case since the validity of a state statute was not drawn in question on the ground of its being repugnant to the Constitution or laws of the United States or, otherwise.

(2) The appeal to the Supreme Court of Illinois was from an interlocutory order and not from a final order (Abst. 122-123), as required by Section 50(2) of Chapter 110 of the Illinois Revised Statutes, 1959.61, and by the Rules 54b and 56d of the Federal Rules of Civil Procedure and by Section 57 of Chapter 110 of the Illinois Revised Statutes, 1961, shown by Exhibits A, B and C and D on pages 1a-4a).

(3) The record was brought to the Supreme Court of Illinois (but not before this Honorable Court), but the ab-

stract of it, certified copy of which is presented to this Honorable Court, shows on its face that both the record and the abstract are defective and do not comply with the requirements of Rules 38 (Exhibit E, page 4a) of the Supreme Court of Illinois, for the abstract omits the certified depositions of the petitioner in which the court found and ruled that he made judicial admissions showing that he has no cause of action.

(4) The petitioner did not comply with the procedural requirements of the Civil Practice Act of Illinois, Chapter 110, Secs. 74 and 75 (Exhibits F and G, pages 6a-9a).

QUESTIONS PRESENTED.

(1) Should a petition for certiorari be granted in which the petitioner requests the granting of two writs of certiorari for two different causes of action that do not involve identical or closely related questions and are totally dissimilar?

(2) Should a petition for certiorari be entertained and granted to review an order of the Trial Court which the Supreme Court of Illinois refused to review and which order shows on its face that it is not final and does not determine the entire cause of action, and which order further shows on its face that the Trial Court did not consider or pass upon any constitutional or federal question?

(2a) Should a petition for certiorari be granted when the petitioner himself asked leave to amend his complaint, which was granted to him, thereby admitting that the court's order is not final, and thereby admitting that by asking and receiving leave to amend his complaint that there was no error in the ruling and that he waived any error in the entry of the order?

STATEMENT OF THE CASE.

The complaint which was stricken alleged that the petitioner was elected by the members of the Hellenic Professional Society of Illinois as its President for the year 1958. That during the course of the annual meeting on October 31, 1958, nineteen defendants, all professional men, eight of whom are members of the Bar of the State of Illinois, conspired to maliciously defame him and commit assault and battery against and upon him, thus attempting to charge in his complaint nine different torts.

The depositions of the petitioner were directed to be taken and the defendants were given extension of time to file their answers or otherwise plead to the complaint until fifteen days after the depositions were completed.

The petitioner made a motion to terminate the depositions. The defendants transcribed the depositions and verified them, and submitted them to the Master, who certified them, and they were filed in Court with the thirty-two exhibits presented during the depositions, with leave of Court (Abst. 82-85). The depositions and exhibits were presented to the court under affidavits of two of the defendants. The court considered them in relation to the entry of the order complained about by the petitioner.

The petitioner filed a motion to suppress the depositions or, in the alternative, that the court not consider them as part of the record, which motion was taken, together with the motions of the defendants to strike the plaintiff's complaint and dismiss his suit, or to enter a judgment on the pleadings, or for a summary judgment.

At no time and nowhere in the pleadings did the petitioner mention or draw in question the validity of any

statute of the State of Illinois or that any such statute was in violation of any Federal statute or of the Federal Constitution.

The order shows that the court did not consider or pass upon any State or Federal constitutional question in the case (Abst. 122-123).

The depositions were not made a part of the record in the petitioner's direct appeal to the Supreme Court of Illinois, nor were they made a part of the exhibits on record before this Honorable Court. The petitioner states in his petition and brief that the constitutional or federal question is stated in the record presented to the Honorable Supreme Court of Illinois, but he did not bring the record before this Honorable Court. We considered it unnecessary to waste the time, effort and expense to file an additional abstract before the Honorable Supreme Court of Illinois. We cannot and we could not present the facts on the merits of the case and argue about them when the record is not before this Honorable Court. It can be seen on pages 82-85 of the Abstract that the petitioner gives only fragmentary abstracting of the exhibits and your Honors can appraise the petitioner's conduct by reading pages 34-35 and 82-85 of his certified abstract of the record. He names the exhibits, but does not give their contents. One of the exhibits is his depositions in which the court found admissions and entered a summary judgment on part of his complaint. As to the rest of his complaint, the court struck it and the petitioner asked leave to file an amended complaint within forty (40) days (Exhibit H, Page 13a) and the order shows his request was granted.

He did not file any amended complaint but preferred to appeal from the Trial Court's order directly to the Supreme Court of Illinois. Notwithstanding those facts,

the petitioner still complains that his constitutional right to a trial by jury was violated.

In his petition he misstates the facts when he states (page 21 of his petition), that constitutional questions were raised and asserted in petitioner's pleadings in the State Trial Court, if by that statement he means to convey the thought that he raised a Federal Constitutional question in his pleadings. That is not the fact. Only in two places he complains that he was denied "due process" (but he is not definite as to whether it is a Federal due process or State law due process that he was denied), and that appears on page 16 of his abstract where he says that the defendants made long defamatory statements and insisted that they appear in the record "knowing that such conduct violates the provisions of Rule 19 of the Supreme Court of Illinois and the constitutional guarantees of due process", and on page 21 he states: "which said malconduct of the defendants violates plaintiff's constitutional guarantees of due process and the provisions of Rule 19 of the Supreme Court relating to discovery depositions." We failed to find any other statement in his abstract which draws any question in violation of any Federal statute or the Federal Constitution.

ARGUMENT.

The order appealed from is not a final order, for the court did not dismiss the entire suit and did not order that the plaintiff go hence without day and take nothing by this suit, or words of similar effect. The court granted the plaintiff's Motion for Leave to Amend his complaint.

In our motion before the Honorable Supreme Court of Illinois to dismiss the plaintiff's appeal, the affidavit of John C. Gekas was attached, in which the petitioner is quoted to have said to the court: "May we ask leave to file an amended complaint within forty days, your Honor? * * *" The Court, "Now I am going to give you leave. If you want to file an amended complaint in forty days you will have the right to do that. Then they have the right to make any motions they may desire, but let's not cross that bridge until we get to it." "Now do you want to stand on the record or do you want to file an amendment?" Sarelas: "I want to file an amended complaint. * * * Under Section 50 we cannot appeal." The Court: "I know you can't unless I give you permission to do it."

His argument in his petition could not now be tenable. The court found that he admitted that there was no assault and battery committed upon him.

Although the order provided "in respect to that part of the complaint", that is, concerning the assault and battery, "that the plaintiff go hence without day and take nothing by this suit", he still argues that the order is a final order determining the entire suit. The statute of Illinois concerning summary judgment is the same as Rules 54(b) and 56(d) of the Federal Civil Practice Rules. Exhibits A, B, C and D and the Illinois and Federal Courts considered

the statutes and the rules to be similar. The petitioner is well acquainted with the statute and the rules. We are at a loss to understand why the petitioner is still prosecuting this suit to reverse the decision of the trial court. His petition is frivolous. The court may appraise his petition and conduct by reading pages 34-35 of his certified abstract. Not one of the cases cited by him is in point.

We respectfully submit the following cases cited in the notes are in point. (Footnotes 1, 2 and 3)

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(1) Sec. 50(2), Chap. 110, Ill. Rev. St. 1959-61, Rule 54(b) and 56(d) of the Federal Rules of Civil Procedure.

Ariola v. *Nigro*, 13 Ill. (2) 200; 148 N.E. (2) 787;
Cannon v. *Thomson*, 28 Ill. App. (2) 69; 170 N.E. (2) 174.

(2) No appeal can be taken from a partial summary judgment without the express finding by the Trial Court that there is no just reason for delaying the enforcement of the judgment or the appeal.

Garbose v. *George A. Giles Co., et al.*, 183 Fed. (2) 513;
Dyer v. *McDougel*, 201 Fed. (2) 265;
Wynn v. *Reconstruction Finance Corp., et al.*, 212 Fed. (2) 953;
Borges v. *Art Steel Co., Inc.*, 243 Fed. (2) 350;
Leonard v. *Socony-Vacuum Oil Co.*, 130 Fed. (2) 535.

(3) The rule was the same under the old practice.

Clark v. *Kansas City*, 172 U.S. 334;
Missouri K. & T. Ry. Co. v. *Olathe*, 222 U.S. 185;
Meagher v. *Minnesota Thresher Mfg. Co.*, 145 U.S. 608, 610-611;
Gill v. *West End Pine Apartments, Inc., et al.*, 339 Ill. App. 513; 90 N.E. (2) 280 (First District No. 44813);
Dodd & Edmunds, Ill. App. Prac. Sec. 813, Page 557;
Florence Huntoon v. *Dr. J. E. Pritchard*, 295 Ill. App. 10, 13;
Retail Merchants Assn. Mut. Fire Ins. Co. of Illinois v. *Fred W. Cox*, 138 Ill. App. 14, 21;

The petitioner makes much of his complaint and quotes at length from it, and speaks of the procedural history in relation to it. He overlooks the fact, however, that he stands before the court without a complaint. His complaint was stricken and in theory of the law it is non-existent, and everything that related to the part of the complaint that was stricken falls with it. All his quotations from the interlocutory pleadings likewise fall by the wayside. His judicial admissions are most conclusive against him. He accepted the court's decision and asked leave to amend, and, having obtained that leave to amend within forty days, and having not filed an amendment, he also stands in default before the court. By his conduct and his acts the petitioner confessed that he has no cause of action, especially after he made the judicial admissions which the court found sufficient to hold that there was no assault and battery committed upon him. The cases sustain our contention (Footnote 3)

The petitioner again fails to comply with the elemental requirements necessary to support his petition for certiorari. He fails to bring up a proper transcript of the record that would present the case to this Honorable Court and the grounds upon which he seeks the writ. He failed to bring before the Honorable Supreme Court of Illinois and before this Honorable Court his depositions. Therein the court found judicial admissions and decided that he had no case, and here, he argues from the depositions that the de-

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(3) *Continued*

K & L Security v. *Hibernian Baking Assn.*, 137 Ill. App. 175 (180);

Rose B. Bennett v. *Union Central Life Ins. Co.*, 203 Ill. 439 at page 444;

Esther F. Falkenau v. *Dr. N. J. Smedley*, 200 Ill. App. 6.

fendants were wrong and the court was in error in allowing the depositions to be filed as an exhibit, and in considering them. How can it be possible for your Honors to consider his argument when you do not have before you that subject-matter about which he complains? He adds to this failure a most defective abstracting of the exhibits that were admitted or presented at the time of the taking of his depositions. The exhibits which he lists in his abstract were filed by order of court, together with the depositions, which also were described as an exhibit. If the depositions were improper, defective or untrue and the court was in error in considering them, or that his admissions therein contained were not made by him, then the best way that he could prove those facts is by bringing the depositions before this Honorable Court. Assuming that his depositions were brought before this Honorable Court, he still must overcome the obstacle that the order from which he seeks to take an appeal is not final, but partial, and interlocutory. Again the authorities sustain us. (Footnote 4)

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(4) In *Matson v. Holliday*, 25 Ill. App. (2) 90; 165 N.E. (2) 718, the syllabus states:

"The record filed in Reviewing Court must present fairly and intelligently the substance of those portions of the record on which error is assigned, and it is not the duty of successful litigant to supply deficiencies in the record."

Harris, et al. v. Frank Annunzio, Director of Labor, et al., 411 Ill. 124 at page 126; 103 N.E. (2) 477.

At page 126 it is stated:

"* * * Rule 38 of this court, (Ill. Rev. Stat. 1949, Chap. 110, par. 259.38), requires the party prosecuting an appeal in this court to furnish a complete abstract of the

The petitioner is precluded from argument or presentation of any statement contained in his stricken complaint. By asking leave to amend he admitted that he had no cause of action or reason to complain. The modern civil procedure and the cases cited expressly establish the rule that his depositions can be used in a motion for summary judgment. His depositions were taken under oath. The depositions were transcribed and verified by the court reporter and were certified by the Master, and they were presented as exhibits by verified petition of the defendants. The trial judge read his depositions and found conclusively that the petitioner had no cause of action based on assault and battery. He made no explanation that he made some mistake in his testimony. He is, therefore, conclusively bound

(c) *Continued*

record. Such abstract must be sufficient to present fully every error relied upon for reversal. In *Department of Finance* v. *Sheldon*, 381 Ill. 256, we held that the substance of the record should be abstracted so that it would not be necessary for the court to resort to the record to determine the issues presented; that everything necessary to decide the questions raised on appeal must appear in the abstract; and that failure of the abstract to properly present the errors relied upon would warrant the court in affirming the judgment. In *Hayes* v. *Industrial Com.*, 383 Ill. 272, we reviewed at some length previous decisions of this court concerning the application of the rule, and concluded that, where the abstract does not show any judgment entered by the trial court, the failure of the party bringing a case to this court to furnish a proper record and to properly abstract the same, so as to fully present the errors relied upon, was ground for affirmance."

by his judicial admissions made under oath and the following authorities sustain us. (Footnote 5)

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(5) *Clifton, et al.* v. *Tomb*, 21 Fed. (2d) 893, at page 902:

"* * * It has been held that the sworn testimony of a party who had control of his case, with power to bind himself conclusively by pleadings, stipulations, or admissions as to facts, resting upon his own knowledge, is of such a solemn character that, in the absence of a clear showing of mistake, inadvertence, or oversight, it should ordinarily be regarded as precluding him from establishing an inconsistent state of facts. *Smith* v. *Boston El. Ry. Co.*, (C.C.A. 1st) 184 F. 387, 37 L.R.A. (N.S.) 429. See also, *Pope* v. *Allis*, 115 U.S. 363, 6 S. Ct. 69, 29 L. Ed. 393; *National Steamship Co.* v. *Tugman*, 143 U.S. 28, 12 S. Ct. 361, 36 L. Ed. 63."

Ness v. *Bilbob Inn, Inc.*, 15 Ill. App. 2d 340, 346-347:

"* * * It is evident that such statements are admissions and that under the rules of the Supreme Court admissions made in discovery depositions may be used in the trial of the case, and could be used in a motion for a summary judgment.

The affidavit made by Mr. Dennen was an affidavit that he had attended the taking of the deposition and that the plaintiff had made certain admissions at that hearing, and the making of the admissions were things of which Mr. Dennen had personal knowledge. It is evident that although the deposition was not formally correct, in that it had not been certified to by the taking officer, nor had it been signed by the maker of the deposition nor had a copy been furnished to the attorney for the plaintiff, still it shows that the plaintiff was sworn and made certain answers and it therefore either corroborates or contradicts the affidavit of Mr. Dennen."

Meier v. *Pocius*, 17 Ill. App. (2d) 332, 335;

State Farm Mutual Insurance Co. v. *Bonacci*, 111 Fed. (2) 412, 419;

General Insurance Co. v. *Hughes*, 249 S.W. (2) 231, 234;

Slowlind Oil & Gas Co. v. *State*, 145 S.W. (2) 569, 570.

There is no Federal statute or the validity of any State statute as being repugnant to the Federal laws or the Constitution drawn in question. Under Sec. 75 of Chapter 110 of the Illinois Revised Statutes the Supreme Court of Illinois did not and could not take jurisdiction of this case for there was no constitutional question involved. Its dismissal of the appeal merely on the motion of the appellees does not mean, as the petitioner claims, that the Supreme Court of Illinois rendered an opinion on the matter of its jurisdiction over this case. The decisions of the Supreme Court of Illinois hold that, in order to take jurisdiction of a case like the one before this Honorable Court, it must be shown affirmatively in the record of the case that there is a fairly debatable constitutional question involved; that the constitutional question was raised and presented for consideration of the trial court; and it is not sufficient to make charges of unconstitutionality in an argument or in a brief; it must be raised in good faith and not pretended in order to give the Supreme Court jurisdiction; the record must affirmatively show that the question was presented to the trial court and the court passed on the question and entered an order therein and preserved its decision in the record for review, and the ruling thereon must be assigned as error. The judgment of the court must be based upon the constitutional question and not upon any other issue, even if it were raised and presented for consideration by the trial court.

The petitioner did not attack the constitutionality of the Civil Practice Act of Illinois concerning motions to dismiss his suit for the reason that he does not state a cause of action, and he did not attack the constitutionality of the Civil Practice Act authorizing the court to strike his complaint or to enter an order and dismiss his suit on the pleadings, or to enter a summary judgment. The petitioner merely

complained that the provisions of the Civil Practice Act were not properly applied to his claims. The only question presented was a question of law as to whether the petitioner's pleadings stated a cause of action, and as to whether there was a disputed question of fact or a genuine issue of fact for the jury to pass upon. The trial court found that by the petitioner's judicial admissions there was no genuine issue of fact in the case. In addition, the record must show that the question of the validity of the statute was presented to the court in order to give the Supreme Court jurisdiction on that ground. The cases in the note sustain our contention. (Footnote 6)

The decisions of this Honorable Court approved the law of the State of Illinois as stated by the statutes and the decisions of its Supreme Court, and therefore, since the petitioner did not comply with the jurisdictional and procedural requirements of the State of Illinois, he waived his right to raise either a State or a Federal constitutional question, and is not entitled to a writ of certiorari. (*Central Union Co. v. Edwardsville*, 269 U.S. 190, 194-5; *Pennsylvania Railroad Co. v. Illinois Brick Co.*, 297 U.S. 447, 462-5; *Parker v. Illinois*, 333 U.S. 571, 574-5; *Edelman v. Cali-*

(6) *Wilson* v. *Prochnow*, 354 Ill. 98; 187 N.E. 914;
People v. *Schmidt*, 413 Ill. 80; 107 N.E. (2) 842;
Dean v. *Northern Trust Co.*, 259 Ill. 148; 102 N.E. 244;
Ryan v. *City of Chicago*, 363 Ill. 607; 2 N.E. (2) 913;
Kellogg v. *Kellogg*, 371 Ill. 241; 20 N.E. (2) 585;
City of Watseka v. *Wilson*, 11 Ill. 2d 265; 142 N.E. (2) 34;
The Village of Lansing v. *Hacker*, 7 Ill. 2d 258; 130 N.E. (2) 265;
Leffler v. *Browning*, 14 Ill. 2d 225; 151 N.E. (2) 342;
Terren v. *City of Chicago*, 413 Ill. 141; 108 N.E. (2) 476.

fornia, 344 U.S. 357, 358-9; *Hulbert* v. *City of Chicago*, 202 U.S. 275-277).

The power of the Supreme Court of the United States has over judgments of the state court is to correct them to the extent they incorrectly adjudge Federal rights (*Herb* v. *Pitcairn*, 324 U.S. 117, 125-126).

It must appear affirmatively from the record that a Federal question was presented to the court to which the writ is requested to be directed; that its decision of the Federal question was necessary to the determination of the case and that the Federal question was actually decided or that the judgment rendered could not have been rendered without deciding the Federal question. (*Southwestern Bell Tel. Co.* v. *Oklahoma*, 303 U.S. 206). The Federal question must affirmatively appear in the record and it cannot be deduced by inference. (*Orient State Co.* v. *Butler Co.*, 166 U.S. 648, 655; *Thomas* v. *State of Iowa*, 209 U.S. 258).

When the judgment of the court of the State of Illinois rests on a ground sufficient to sustain its decision other than on the ground of a violation of any Federal right, the Supreme Court of the United States will not take jurisdiction. (*Radio Station WOW, Inc.* v. *Johnson*, 326 U.S. 120). It appearing that the Honorable Supreme Court of Illinois did not deliver an opinion and since the dismissal of the appeal rests fully upon non Federal ground, this Honorable Court does not take jurisdiction to review the order of dismissal of the trial court. (*Stembridge* v. *Georgia*, 343 U.S. 541; *Chicago* v. *Willett Co.*, 344 U.S. 912; *Lottas* v. *Illinois*, 334 U.S. 804).

The construction of the State statute by a State court is binding and its decision is not reviewable by the Supreme Court of the United States. (*Gharanda Trust Co.* v. *Bland*, 287 U.S. 509, 513; *Bowe* v. *Scott*, 233 U.S. 658, 665).

When the opinion of a State court does not mention anything about the validity of any statute as being repugnant to Federal law and the case was disposed of totally on an independent ground, this Honorable Court does not take jurisdiction. (*New York Central* v. *New York*, 186 U.S. 269).

It must be clear that a Federal question appears in the record. If the decision is based upon two grounds, one of which is based upon the State law, and it is fully sufficient to sustain the decision, this Honorable Court does not take jurisdiction. The same rule applies where, as in this case, the State court did not render an opinion. (*Lynch* v. *New York*, 293 U.S. 52, 54-55; *Herb* v. *Pitcairn*, 324 U.S. 117, 125-126; *Bosca College* v. *Kentucky*, 211 U.S. 45; *Fox Film Corp.* v. *Mueller*, 296 U.S. 207, 210).

The ruling of the State court on questions of pleading will not be reviewed by the United States Supreme Court. (*Brinkmeier* v. *Missouri Pacific R.R. Co.*, 224 U.S. 268).

The question must be a substantial one and not frivolous. (*Equitable Life Assurance Society* v. *Brown*, 187 U.S. 308, 311; *Penn. R.R. Co.* v. *Illinois Brick Co.*, 297 U.S. 447, 462).

A challenge to the validity of a State statute first made in the brief filed in the highest court of the state and certified to the Supreme Court of the United States could not be valid when presented for the first time in the Appellate Court. (*Memphis Natural Gas Co.* v. *Beeler*, 315 U.S. 649 651; 86 L. Ed. 1090, 1094; 62 Sup. Ct. 857; *Jett Bros. Distilling Co.* v. *City of Carrollton*, 252 U.S. 1, 5-6; 64 L. Ed. 421; *Stadelman* v. *Miner et al.* 246 U.S. 544, 38 Sup. Ct. 359; *French* v. *Fowler*, 199 U.S. 274; 26 Sup. Ct. 76).

CONCLUSION.

For the reasons above stated, we respectfully request that the petition for a writ of certiorari be denied.

Respectfully submitted.

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APPENDIX.

EXHIBIT A

Federal Rules of Civil Procedure.

VII. Judgment.

"Rule 54. Judgments; costs.

. . . . .

(b) Judgment upon multiple claims. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, the court may direct the entry of a final judgment upon one or more but less than all of the claims only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates less than all the claims shall not terminate the action as to any of the claims, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims."

EXHIBIT B

Federal Rules of Civil Procedure.

"Rule 56. Summary Judgment.

. . . . .

(d) Case not fully adjudicated on motion. If on motion under this rule judgment is not rendered upon the whole

case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order, specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly."

EXHIBIT C

Illinois Revised Statutes, 1959-1961,
Chapter 110, Section 57.

Summary Judgments and Decrees.

(1) For plaintiff. Any time after the opposite party has appeared or after the time within which he is required to appear has expired, a plaintiff may move with or without supporting affidavits for a summary judgment or decree in his favor for all or any part of the relief sought.

(2) For defendant. A defendant may, at any time, move with or without supporting affidavits for a summary judgment or decree in his favor as to all or any part of the relief sought against him.

(3) Procedure. The opposite party may prior to or at the time of the hearing on the motion file counteraffi-

davits. The judgment or decree sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment or decree as a matter of law. A summary judgment or decree, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(4) Form of affidavits. The form and contents of and procedure relating to affidavits under this section shall be as provided by rule.

(5) Affidavits made in bad faith. If it appears to the satisfaction of the court at any time that any affidavit presented pursuant to this section is presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing it to pay to the other party the amount of the reasonable expenses which the filing of the affidavit caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt. As amended by act approved July 19, 1955. L. 1955, p. 2238

EXHIBIT D

Illinois Revised Statutes, Chapter 110, Section 50.

* * * * *

"(2) If multiple parties or multiple claims for relief are involved in an action, the court may enter a final order,

judgment or decree as to one or more but fewer than all of the parties or claims only upon an express finding that there is no just reason for delaying enforcement or appeal. In the absence of that finding, any order, judgment or decree which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not terminate the action, is not enforceable or appealable, and is subject to revision at any time before the entry of an order, judgment, or decree adjudicating all the claims, rights and liabilities of all the parties."

EXHIBIT E

Illinois Revised Statutes, Chapter 110, Section 74.

"Method of Review.

(1) Every order, determination, decision, judgment or decree reviewable by the Supreme or Appellate Court of this State is subject to review by notice of appeal. The review shall be designated an appeal and constitutes a continuation of the proceeding in the trial court. The appeal presents to the reviewing court all issues which heretofore have been presented by appeal and writ of error. The right heretofore possessed by any person not a party to the record to review a judgment or decree by writ of error is preserved by notice of appeal.

(2) All distinctions between the common law record, the bill of exceptions and the certificate of evidence, for the purpose of determining what is properly before the reviewing court, are abolished. The trial court record shall include every writ, pleading, motion, order, affidavit, and

other documents filed or entered in the cause and, in addition, all matters before the trial court which are certified as a part of the record by the judge thereof. All matters in the trial court record actually before the court on appeal may be considered by the court for all purposes, but if not properly authenticated the court may order further authentication.

(3) Every order, determination, decision, judgment or decree of the Appellate Court heretofore reviewable by the Supreme Court by writ of error shall hereafter be reviewable only by appeal. The appeal shall be perfected by notice of appeal filed with the clerk of the Appellate Court within 40 days after the order, determination, decision, judgment or decree of the Appellate Court becomes final, either through denial of a petition for a rehearing or the expiration of the time within which a petition for rehearing might have been filed. The form and contents of notice of appeal shall be, as near as may be, as provided by rule of the Supreme Court for notice of appeal in the case of an appeal from a trial court. No step in the perfection of the appeal other than the filing of the notice of appeal is jurisdictional. The appeal may be taken by any person heretofore entitled to sue out a writ of error. It presents to the Supreme Court all issues heretofore presented by writ of error, and constitutes a continuation of the proceeding in the Appellate Court. All steps subsequent to the filing of the notice of appeal shall be as provided by rule. As amended by act approved July 19, 1955, L. 1955, p. 2238."

(Appendix)

EXHIBIT F

Illinois Revised Statutes, Chapter 110, Section 75.

"Jurisdiction of Appellate and Supreme Courts.

(1) Appeals shall be taken directly to the Supreme Court (a) in all cases in which a franchise or freehold or the validity of a statute or a construction of the constitution is involved, (b) in all cases relating to revenue, or in which the State is interested as a party or otherwise and (c) in cases in which the validity of a municipal ordinance or county zoning ordinance or resolution is involved and in which the trial judge certifies that in his opinion the public interest so requires.

(2) In all cases in which their jurisdiction is invoked pursuant to law, except those wherein appeals are specifically required by the constitution of the State to be allowed from the Appellate Courts to the Supreme Court, the judgments or decrees of the Appellate Courts shall be final, subject however, to the following exceptions: (a) in case a majority of the judges of the Appellate Court or of any branch thereof shall be of the opinion that a case decided by them involves a question of such importance, either on account of principal or collateral interest, as that it should be passed upon by the Supreme Court, they may in such case grant leave to appeal to the Supreme Court on petition of parties to the cause, in which case the said Appellate Court shall certify to the Supreme Court the grounds of granting said appeal. (b) In any such case as is hereinbefore made final in the Appellate Courts it is competent for the Supreme Court to grant leave to appeal

for its review and determination with the same power and authority in the case, and with like effect, as if it had been carried by appeal to the Supreme Court. [sic] In any case heard and determined in the trial court upon actual trial in which the Appellate Court upon appeal from the final judgment or decree entered in the cause in the trial court reverses the judgment or decree and remands the cause for a new trial or hearing, and in which the party in whose favor the trial court's judgment or decree was rendered presents to and files with the Appellate Court an affidavit stating that he will be unable on a future trial or hearing to adduce other or additional evidence, facts, or circumstances that were adduced in the trial court and expressly waiving the right to a new trial or hearing and consenting and requesting that the portion of the judgment of the Appellate Court remanding the cause for new trial or hearing be deleted and stricken from the judgment of the Appellate Court, then that court upon motion shall amend its judgment by striking out the portion thereof remanding the cause for new trial or hearing. Thereupon it is competent for the Supreme Court to grant leave to appeal from such final judgment of reversal for its review and determination with the same power and authority in the case, and with like effect, as in other cases in which leave to appeal from the final judgments of the Appellate Courts is authorized in this section.

Provided, however, that application under this Act to the Supreme Court to cause it to grant leave to appeal for its review and determination shall be made within 40 days after the judgment of the Appellate Court has become final, either through the denial of a petition for rehearing or the expiration of the time within which a petition

for rehearing might be filed; otherwise the power of the Supreme Court to review the judgment and decree of the Appellate Court shall cease to exist. Answers to such petitions for leave to appeal may be filed by respondent within 15 days after the expiration of the time for the filing of the petition for leave to appeal or within such further time as the Supreme Court or some Justice thereof in vacation may grant, if granting within such 15-day period. As amended by act approved July 21, 1959. L. 1959, p. 1784."

EXHIBIT G

Illinois Supreme Court Rule 38.

"Abstracts. The party prosecuting an appeal in this court or an Appellate Court shall furnish an abstract of the record on appeal, referring to the pages of the record by numerals on the margin. If the record contains the evidence it shall be condensed in narrative form so as to present clearly and concisely its substance. The abstract shall be preceded by a complete index, alphabetically arranged, indicating the nature of each exhibit, i.e., Will, Trust Deed, Contract, and the like, and the page on which it may be found, and giving the names of the witnesses and the pages of the direct, cross and redirect examination. In cases brought from an Appellate Court the abstract filed in that court may be filed in this court by changing the cover and including an abstract of the record of the Appellate Court with an index thereto. The abstract need only be sufficient to present fully every error relied upon. Matters in the record on appeal not necessary for a full under-

standing of the questions presented for decision shall not be abstracted. Upon motion and good cause shown after the filing of the record on appeal, the court or a judge thereof in vacation may dispense with the furnishing of an abstract or with the abstracting of matters in the record even though they are to be considered on appeal. The abstract will be taken to be accurate and sufficient unless the opposing party files an additional abstract, making necessary corrections or additions. The additional abstract may be filed without order of court."

EXHIBIT H

No. 36815

In The

SUPREME COURT OF ILLINOIS

PETER S. SARELAS, Plaintiff-Appellant, vs. JOHN C. GEKAS, et al., Defendants-Appellees.	Appeal from Circuit Court Cook County. Honorable John J. Lupe, Judge Presiding.

State of Illinois
County of Cook—ss:

AFFIDAVIT.

John C. Gekas, being first duly sworn on oath, deposes and says that he is one of the Defendants in the above entitled cause and he appears herein Pro Se and as Of Counsel,

(Appendix)

Affiant further states that he believes that the above and foregoing Motion, Suggestion, Points therein raised and Propositions therein stated are well taken and that he and his co-Defendants do not present them for the purpose of delay.

Affiant further states that the Honorable Judge John J. Lupe, when he rendered his oral opinion, the Plaintiff who appeared Pro Se and the Honorable Judge stated in part as follows (the quotations are copied from the verified transcript of the Court Reporter, Thomas E. Lief):

"Plaintiff moved the Court to not consider the evidence taken in the discovery deposition which is now being used in defendant's motion for summary judgment, and the plaintiff alleges that the rules of the Supreme Court had not been complied with, the manner in which the depositions were taken, and what took place at the time of the taking of said deposition.

"The Court, after a careful consideration of the law and the able arguments of respective counsel heretofore presented, is of the opinion that any admissions in said depositions or any testimony that could throw light upon the question of whether or not an assault had been committed should be considered by the Court and the same has been so considered, and the motion of the plaintiff in that regard is denied.

"Discovery depositions may be used for the purpose of impeaching the testimony of a witness or any admission made by either of the parties to the lawsuits and may be used in a motion for summary judgment.

"It is fundamental that any admissions or statements that have been made by the opposing party in the deposition could be used in a motion for summary

judgment are admissible on the hearing of a motion for summary judgment in the case.

"In the case of *Ness v. Billboldt Inn, Inc.*, 15 Ill. Appellate, Section 340, it was held that even in depositions that were not completed, admissions contained therein could be used on motion for summary judgment.

"After carefully reading the long depositions and various pleadings in connection therewith, the Court is satisfied that there was no assault as contemplated by law, nor was there a battery committed by the defendants or either of them against the plaintiff."

. . . . .

"Therefore, on said motion for summary judgment with reference to the assault and battery, the same will be sustained and the finding will be in favor of the defendants on said issue.

"Now, gentlemen, you may draw an order in this case. I don't want to give you the right to be heard in the matter. I don't want you to. I don't want to appear to be offensive to anybody. I just got a job here as a judge, and I'm called upon to decide these matters, and I must decide them in the light as I see them. I'm terribly sorry in this case, that men such as all you gentlemen in such high standards of professional law, that this matter had occurred. I don't think it reflects a great deal of credit upon and dignity upon the Bar in this county. These kinds of suits are not wholesome in their nature, and I think that we should all be careful about it for the protection of the manner in throwing around members of our Bar. You may draw an order, gentlemen, sustaining defendants' motion to strike the complaint, the same being insufficient in law

for the reasons hereinabove given with the exception of the allegations with reference to assault, and as to that charge, the Court will enter an order in favor of the defendants allowing said motion for summary judgment.

"The plaintiff, if he desires, it is entirely up to him now, he can stand on his record in this case, and the pleadings and the deposition, and all, or if he desires, it is to the motions to strike the allegations all except the one that the Court has ruled upon, about the question of assault, if he desires, he may have a right, it's up to him, whether or not he desires to file an amended complaint not on your motion to strike, the allegations of the complaint that I hold are insufficient in law for him to file his suit. As to the question of summary judgment, that will be absolutely sustained on the allegation of assault in this case.

"See, he alleges in this case, as to that question of assault, he says in his complaint he was assaulted by the defendants. Then, when he makes a proper allegation on score, there must be an answer, or a motion for summary judgement or a motion to strike. I hold his allegations with reference to assault are sufficient. I hold his allegation with reference to all other allegations are insufficient on a motion to strike, and my finding will be accordingly. The motion will be sustained to strike all allegations or the cause with reference to the cause that he attempts to allege with the exception of assault, but allegation of assault, the motion to strike that will be denied. But the motion for summary judgment from the readings of the record in this case shows there was no assault as contem-

plated by the statute; therefore, you are entitled to a summary judgment on that, there being no question of action for a jury to pass upon that particular point. You will draw your order accordingly."

* * * * *

"Mr. Sarelas: May we ask leave to file an amended complaint within 40 days, Your Honor?"

* * * * *

"The Court: Now, I'm going to give you leave, if you want to file an amended complaint in 40 days, you'll have a right to do that. Then they have a right to make any motions they may desire, but let's cross —not cross the bridge until we get to it.

"Now, do you want to stand on the record, or do you want to file an amendment?

"Mr Sarelas. I want to file an amended complaint.

"The Court: All right. Now, in your amended complaint, Counsel, don't allege the question of assault because I've ruled on it. If they m[illegible] a motion to strike that, I'll sustain it, because it's been adjudicated. But as to the question of defamation and all those other matters that the Court has ruled upon, you have a perfect right to file an amended complaint, and then they have a right to make any motions that they desire, whatever it may be, and if and when the time comes, I'll rule upon that.

"Mr. Sarelas: Under Section 50, Your Honor, we cannot appeal.

"The Court: I know you can't, unless I give you permission to do it."

(Appendix)

Affiant further states that the Honorable Trial Court entered an Order, appearing on Page 122 to 123 of the Abstract, from which the Plaintiff appealed.

Affiant further states that the Plaintiff has not, up to this time, filed any amended complaint or has not requested any extension of time to file any amended complaint and that there was no stipulation or agreement by and between the Plaintiff and the Defendants to give him any extension of time whatsoever; that the Plaintiff, instead of complying with the Order of the Trial Court to file his amended complaint within forty days, on the forty-first day filed his notice of appeal (Abst. 123-125).

Affiant further states that the record filed by the Plaintiff herein does not include the depositions and the exhibits introduced in the depositions; that the contents of the said depositions were pertinent, relevant and material and that they were considered as such by the Trial Court in rendering its opinion as is shown by the Order of Court (Abst. 122-123).

Affiant further states that the Plaintiff is maliciously prosecuting six law-suits against this affiant, three of them now before this Honorable Court, one before the Appellate Court and one before the Circuit Court and one in the Superior Court of Cook County, all of them without any foundation and all of them without any cause of action against this affiant; that in defending against all those law suits it requires a great deal of time and attention and that, therefore, your affiant asks this Honorable Court for an extension of time for a period of sixty (60) days in which to prepare any additional abstracts or briefs that might be necessary in the event this Honorable Court

denies the Motion of the Defendants to dismiss this appeal or remand it to the Trial Court.

Affiant further sayeth not.

/s/ John C. Gekas

Subscribed and sworn to before me
this 4th day of January, 1962.

Signature and Seal of Notary Public